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# Philadelphia Neighborhood Conservation: Using Public Policy to Protect Historic and Threatened Residential Neighborhoods

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# Philadelphia Neighborhood Conservation: Using Public Policy to Protect Historic and Threatened Residential Neighborhoods

## **Abstract**

Neighborhood conservation is largely dependent on a municipality's zoning code. Many tools for protecting neighborhoods are embedded into the zoning code, and residents should be able to rely on them to provide a basic level of protection to neighborhood character. Local historic districts are common regulatory tools that are added as an overlay district and have regulations and standards that supplement those provided by the base zoning districts. However, to utilize this more restrictive tool, neighborhoods must qualify based on a variety of criteria related to the significance of the area and the amount of historical integrity that remains in the built fabric. How can Philadelphia, a city known for its wide array of distinctive, historic neighborhoods, protect its defining characteristic when the current zoning code fails to provide a basic level of protection? What are the alternatives for neighborhood conservation when a neighborhood does not qualify for a local historic district, or when it is not appropriate for or desired by low-income residential neighborhoods? In light of the new zoning code rewriting process, this thesis analyzes several recommendations that propose to improve the type of protection offered to neighborhoods. Additionally, it asks the question: where the necessity for flexibility and revitalization outweighs the stringent regulations of a historic district, does the City's Neighborhood Conservation District program provide the balance between protection and flexibility?

## **Keywords**

Philadelphia; historic preservation, public policy

## **Disciplines**

Historic Preservation and Conservation

## **Comments**

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PHILADELPHIA NEIGHBORHOOD CONSERVATION:  
USING PUBLIC POLICY TO PROTECT HISTORIC AND  
THREATENED RESIDENTIAL NEIGHBORHOODS

Lindsey E. Allen

A THESIS

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2010

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## DEDICATION

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I dedicate this thesis to the women in my life who have supported me  
and pushed me to be my very best. Thank you.

## ACKNOWLEDGMENTS

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I have to first thank my family and friends for their support and their patience while I worked through this project. I also extend my sincerest gratitude to my advisor, Randy Mason, who has been so helpful and encouraging since I first got to UPenn and a great resource during the thesis process. Additionally, I would like to thank Laura Spina, Mike Hauptman, Eva Gladstein, Jorge Danta, Erin Cote, and Patrick Hauck for lending their time and professional knowledge to answer many questions regarding neighborhoods and zoning in Philadelphia.

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## INTRODUCTION

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“It is . . . true that an older neighborhood containing just a few architectural styles, having been developed over a relatively short period of time, therefore serves as a cultural “snapshot” of what the area used to be like. Even if the architecture is not eligible for historic district designation, it has a character, made distinct by the architecture, that is worthy of protection.”

Marya Morris, Innovative Tools for Historic Preservation

The historic buildings and neighborhood character of many of Philadelphia’s residential neighborhoods are under-protected by existing public policy. There are over sixty historic districts on or eligible for the National Register of Historic Places but only ten local historic districts on the Philadelphia Register of Historic Places. Refer to Appendix A for a map of these districts. Based on these numbers, it is clear that there is a disparity between the need to preserve these distinct places and the tools available to do so. While this predicament is partially due to the lack of funding and support for the Philadelphia Historical Commission, the certified local government in charge of the local preservation program, there also lacks a successful or desirable alternative to the local historic district program. Philadelphia, like many other post-industrial cities, has lost a significant amount of physical integrity due to disinvestment, urban renewal, and incompatible redevelopment, resulting in a loss of architectural integrity in many existing historic neighborhoods. Many of these neighborhoods do not qualify for local historic district protection under the standards determined by the Philadelphia Historical Commission even though their historic fabric and neighborhood character are in need



of conservation. Preservation is especially pertinent for the neighborhoods that are now experiencing development pressures from Philadelphia's recent revitalization efforts but lack the legal protection to save their defining characteristics.

Zoning, a powerful and almost universally-used planning tool, can provide a basic level of protection to buildings and communities. Zoning appears in several different forms and its effectiveness varies greatly. Ideally, zoning should protect the scale and character of the existing built environment by providing basic dimensional maximums and minimums as well as use restrictions. For a variety of different reasons, many neighborhoods have historically been able to survive because the neighborhood is not currently threatened with development; strong civic associations and community review boards apply pressure to developers to keep new construction in check; or there has been very little change in the neighborhood since its construction. However, some places cannot rely solely on the zoning, especially in a post-industrial city such as Philadelphia where the demographics, purpose, and composition of neighborhoods have changed dramatically over time. Historic neighborhoods, particularly those in close proximity to center city and expanding institutions, are facing new development pressures that cannot be thwarted or regulated by zoning or neighborhood organizations. Unfortunately, Philadelphia's Euclidean zoning code, first adopted in the 1940s, is a complex document that has weak regulations for maintaining the character of many of the City's older residential neighborhoods. Additionally, the administrative and procedural processes by which zoning variances are granted has created a precedent that allows property owners to easily bypass the district regulations, often resulting in incompatible

or undesirable construction, alterations, and demolition. The city is currently undertaking a comprehensive rewriting of the zoning code, which provides this thesis with a timely opportunity to evaluate the disadvantages of the current zoning code and the advantages of the proposed zoning code. This section of the thesis will also discuss some of the alternative zoning tools used by municipalities outside Philadelphia.

The strictest level of neighborhood-scale protection is a local historic district program. As mentioned above, however, many of Philadelphia's historic, vernacular neighborhoods do not have or retain enough architectural integrity to qualify for this designation. Other neighborhoods lack community support for a local historic district for various reasons often related to perceived invasion of private property rights or the heightened expense of designating and living in a local historic district. The present alternative to a local historic district is a "neighborhood conservation district," an alternative type of policy that regulates major change while allowing for more flexibility in maintenance and alterations. They are found throughout the country and can embody a variety of forms. Philadelphia passed the enabling legislature in 2004 but only one conservation district has been designated; its success has been the subject of debate. A brief analysis of the conservation district program in Philadelphia will be followed by recommendations for improvements or changes based on successful neighborhood conservation district programs in other cities.

This thesis attempts to answer two questions. Will the new Philadelphia Zoning Code improve the basic level of protection that should be provided by a city zoning ordinance? Is the Neighborhood Conservation District program effective at providing

neighborhoods with an alternative protective framework?

## METHODOLOGY

In order to better understand the importance of neighborhood conservation, a literature review will explore the emergence and evolution of historic districts and neighborhood conservation. Following this review, an analysis of Philadelphia's current zoning code will be completed. This will include components of the current and proposed zoning code and a study of the Philadelphia's Neighborhood Conservation District ordinance. The current policy analysis will be supplemented with key person interviews in order to gain a deeper understanding of the tools' effectiveness from the perspectives of those who use the tools professionally. Next, using comparable cities and programs, this thesis will describe successful zoning tools that address neighborhood protection, such as modular zoning codes, form-based zoning, performance zoning, and alternative public participation options. The analysis of existing policy together with the research on successful comparable protection programs will be used to analyze the recommendations for the new zoning code published by the Philadelphia Zoning Code Commission. The conclusion will summarize the key changes and how they might affect typical residential neighborhoods in Philadelphia.

## CHAPTER 1 – History and Evolution of Historic Districts

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In analyzing neighborhood conservation tools, it is appropriate to first understand the history of urban form regulations and the emergence of historic districts as the preservationist's primary tool for regulating change. Because many of these tools evolved through planning and zoning, research was done in the context of United States planning history, which helps draw important parallels between planning and preservation. This chapter includes a brief history of zoning; the use of zoning in early historic districts; the consequences of several post-WWII federal policies on cities, planning, and preservation; and a discussion of the present overlap between preservation and planning.

### HISTORY OF ZONING

One of the most commonly used tools for controlling change to the built environment is zoning. It is relevant to neighborhood conservation in that it provides the legal foundation for most protection strategies. Without any additional regulations, zoning provides basic dimensional and use regulations that can help to conserve the traditional character of a historic neighborhood. It is also used to direct or incent change by imposing regulations on new development. Additional regulations, which take the form of local historic districts, conservation districts, and other innovative incentives

used for preserving the built environment all typically lie within a city's zoning code as an overlay or incentive zone.

Zoning was developed around the turn of the 20<sup>th</sup> century primarily as a means to protect the wealthy residents of the new suburbs from common nuisances in the city. The factors that led to its creation were varied. Public health was becoming a major concern at the end of the 19<sup>th</sup> century as cities struggled to accommodate the waves of immigrants that crowded them. The innovation of the steel frame and elevators allowed architects to build taller buildings, reducing the light and air that reached the street. Electricity and the streetcars led to the creation of streetcar suburbs, which quickly transformed the rural lands surrounding the city into congested inner-ring suburbs. To prevent blight in the cities from expanding farther into the countryside and the new suburbs, zoning “provided long-term security against change,” like industry and multi-family dwellings; “anything which might threaten the sanctity of the single-family dwelling suburb.”<sup>1</sup> Widely accepted purposes of zoning were to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.<sup>2</sup>

While zoning did not fix the issues already in place, it did allow for the

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<sup>1</sup> Barry Cullingworth and Roger W. Caves, *Planning in the USA*, 3<sup>rd</sup> Edition, (London: Routledge, 2009), 65.

<sup>2</sup> Purpose derived from the Standard State Zoning Enabling Act which was adopted by nearly all states. In Barry Cullingworth and Roger W. Caves, *Planning in the USA*, 3<sup>rd</sup> Edition, (London: Routledge, 2009), 72.

management of future development. The foundations of zoning lie in the idea that urban development be controlled through districting, that buildings of similar type and use should be uniformly regulated. More importantly, by regulating buildings through type or use, cities had the ability to separate districts they deemed incompatible. In cities, noxious industry and machine shops were separated from residential development, multi-family apartments from single family residential areas, or heavy manufacturing from small stores. Cities could also control height and massing of large buildings in order to provide light and air to the lower stories and to the streets. In suburbs, many of the same separations existed, though a heavier emphasis was often placed on keeping single-family, detached or semi-detached homes separate from everything, including multi-family homes.

The first comprehensive zoning code was the New York City zoning ordinance of 1916. It evolved from a set of height, area, and use restrictions adopted in 1913 to prevent undesirable changes from occurring on Fifth Avenue.<sup>3</sup> Its popularity led to the Standard State Zoning Enabling Act (SSZEA), created by the federally appointed Advisory Committee on Building Codes and Zoning in 1924. The Act provided a model ordinance, based on “an accepted concept of property rights and careful legal precedent,” that contained a defensible, legal framework for municipalities to define the extent of their police power.<sup>4</sup> Following the publication of the SSZEA, zoning became widespread; within just two years it was adopted by 43 of the then 48 states and applied

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<sup>3</sup> Barry Cullingworth and Roger W. Caves, *Planning in the USA*, 3<sup>rd</sup> Edition, (London: Routledge, 2009), 68.

<sup>4</sup> Ibid, 71.

to approximately a quarter of the population.<sup>5</sup> However as popular as zoning was, it did not evolve without conflict. The exercise of police power, under which zoning is enforced, existed long before zoning was introduced. Zoning, however, extended the permissible use of police power from individual properties to an entire city; it now applied to all property, whether or not they were developed. Shortly following the passage of the SSZEA, the constitutionality of zoning was challenged in the famous 1926 Supreme Court case, *Ambler Realty v. Euclid, Ohio*. The Court ultimately upheld the constitutionality of comprehensive zoning, dramatically extending police power “in that it enabled a municipality to prohibit uses which were not ‘nuisances’ in the strict sense of the term.”<sup>6</sup> As successful and popular as zoning, it lacked a specific planning component that could help to justify the placement of zoning district classifications beyond just a zoning map. Recognizing the importance of planning, the Advisory Committee responsible for the SSZEA reconvened and published the Standard City Planning Enabling Act (SCPEA), in 1928. This act allowed for the creation of planning commissions, set guidelines for the creation of master plans and public improvement provisions, and allowed for the regulation of subdivisions of private land.<sup>7</sup> The creators of the SSZEA and SCPEA intended there to be a link between comprehensive planning and zoning by including in zoning ordinances a requirement that zoning decisions be made in accordance with a comprehensive plan. However, this requirement is interpreted in a variety of ways, often to mean that zoning be administered comprehensively rather

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<sup>5</sup> Ibid, 76.

<sup>6</sup> Ibid, 74.

<sup>7</sup> Ibid, 76.

than in a piecemeal fashion. The *Euclid* case, reaffirmed in courts throughout the country since 1926, as well as the use of comprehensive plans have afforded municipalities powerful tools for shaping the built environment.

## HISTORY OF EARLY HISTORIC DISTRICTS

Historic districts emerged just after the introduction of zoning. Although zoning was not created with the specific intent to preserve historic neighborhoods it could be used to protect the character of a desirable place from changing in unwanted ways. The SSZEA finally gave preservationists a public context in which they could even consider protecting a broad swath of buildings. Until the early 1920s, preservation dealt primarily with individual landmark buildings. Many were preserved only when there was an imminent threat of demolition; and they were typically restored to the standard associated with house museums. Because of the reactionary nature of this early form of historic preservation, as well as the meticulous effort and large amount of money that goes into restoring buildings to this standard, it seemed impractical to do this for a large number of houses.

As the popularity of zoning spread, preservationists adapted it to prevent undesirable changes from taking place in the exceptional residential districts that deserved a stricter form of protection. The concerns of Susan P. Frost and the Society for the Preservation of Old Dwellings in Charleston; the City Council of New Orleans and the Vieux Carré Commission; and the creative visioning of Dr. William Archer



Rutherford Goodwin in Williamsburg; contributed to the evolution of zoning, giving way to the first forms of district preservation. Created for different reasons, the historic districts in Charleston, New Orleans and Williamsburg are seen as models for early historic districts.

The historic district model typically used today evolved from the preservation model created in Charleston, South Carolina. Preservation in Charleston was based on concerns for the destruction of existing houses in the entire historic neighborhood. This model was contrary to the museum-town model, where the primary goal is fostering pride and encouraging tourism. The introduction of the automobile transformed Charleston from an isolated southern city to an attraction for those interested in the distinctive local architecture of the antebellum past. As interest grew, museum directors and antique collectors began to remove architectural detailing from many historic homes. In 1920, Susan P. Frost formed the Society for the Preservation of Old Dwellings in order to address these problems and advocate for the buildings' protection. In the late 1920s, a modern gas station was built in the old part of town, which spurred the development of "a zoning ordinance that would create what was the nation's first historic district."<sup>8</sup>

In 1929, the city council established a city planning and zoning commission whose primary responsibility was to grant or deny approvals for nonresidential uses anywhere in the city. In 1931, the Old and Historic Charleston District was placed under a permanent zoning ordinance. In the decades following, Charleston pioneered a range of successful strategies and procedures for managing historic districts. It should be

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<sup>8</sup> David Hamer, *History in Urban Places*, (Columbus: Ohio State University Press, 1998), 5.

noted, however, that due to Charleston's high level of historical and heritage awareness, in conjunction with its outstanding architecture, the degree to which the preservation strategies succeeded was unique. Nonetheless, Charleston became a highly influential model for neighborhood preservation. Hosmer wrote:

Charleston is not only one of the most interesting cities in the country because of its history and architecture; it has also been the laboratory that utilized nearly all of the most important urban preservation techniques: private restoration programs by real estate agents, historical zoning and a board of architectural review, a careful survey of architectural resources followed by extensive publication, and the creation of a foundation that could utilize a revolving fund to preserve and restore many old buildings.<sup>9</sup>

Another successful example of an early historic district is the Vieux Carré zoning district in New Orleans, which was created as a response to early 20<sup>th</sup> century development pressures and an increase in visitors interested in the architecture and heritage of the French Quarter. The preservation model enacted by the city of New Orleans was a combination of the museum model of Williamsburg and the zoning ordinance used by Charleston. In 1925, the Vieux Carré Commission was created specifically to oversee preservation in the Vieux Carré zoning district. Almost concurrently, a study was completed for a citywide zoning ordinance, out of which came a recommendation for the creation of a separate Vieux Carré zoning district. Height, use, and area restrictions would protect the “unusual and historic section of predominant residential uses and small businesses.” Unlike the Old Historic District in Charleston, however, the Vieux Carré zoning district was regulated separately from the city zoning code and the Vieux Carré Commission could not halt demolition of old buildings.<sup>10</sup> Similar to the Williamsburg model, the Vieux Carré district understood its

<sup>9</sup> Charles Bridgman Hosmer, *Presence of the Past*, (New York: Putnam, 1965), 274.

<sup>10</sup> David Hamer, *History in Urban Places*, (Columbus: Ohio State University Press, 1998), 7.

attraction as a historic district and the commission made a concerted effort to impose the “New Orleans style” on new construction, further preserving the historic character of the neighborhood.<sup>11</sup>

In the early 1920s, for patriotic reasons, Dr. Goodwin began advocating the restoration of Colonial Williamsburg to look as it did during the 18<sup>th</sup> century, when the city was “the ‘Cradle of the Republic’ and ‘the birthplace of her liberty.’”<sup>12</sup> In 1927, with generous financial support from John D. Rockefeller, Jr., demolition, restoration, and recreation began. By the 1930s, over seven hundred buildings erected since 1790 were demolished; replicas of original buildings, including the Capitol building and the Governors Palace, were recreated; and approximately 90 other buildings were restored. The method of transforming a site into a museum town became a model of a particular type of historic district. While it is criticized for “exploit[ing] the architectural heritage of ‘historic’ towns,”<sup>13</sup> for tourism, decisions were based on thorough historical scholarship. Attempts to replicate the Williamsburg model were made across the country, but without the large financial support from a philanthropist like Rockefeller few towns and cities were able to successfully carry out their plans to the same extent.

These early historic districts were almost geographically exclusive to the American South. Southern cities that succeeded benefited from an unusually high sense of self-awareness and understanding of heritage, compared with many other cities where

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<sup>11</sup> Ibid, 8.

<sup>12</sup> Ibid, 2.

<sup>13</sup> Ibid, 2.

consensus to preserve districts was more difficult to achieve.<sup>14</sup> Early historic districts were active in small cities or towns; it was not until 1955, when Beacon Hill in Boston was given protection, that the first historic district was designated in a neighborhood of a large, northern metropolis. Massachusetts had one of the more progressive legislatures at the time, approving enabling legislature for local districts in Lexington and Concord by the end of the 1950s and another forty-one districts between 1963 and 1973.<sup>15</sup>

Philadelphia also proved to be progressive in terms of historic preservation. In 1955, state enabling legislature allowed for the creation of the Philadelphia Historical Commission (PHC), the first agency in the U.S. to have control over all alterations to historic buildings within the City's limits.<sup>16</sup> However, the ability for Philadelphia to designate and regulate local historic districts would not occur until the 1980s. Historic districts, occurring sporadically at the municipal level, would not be included in national legislation until 1966.

Federal statutes since the turn of the 20<sup>th</sup> century contained preservation policies, though most were "limited in scope and lacked effective means of enforcement."<sup>17</sup>

The first was the Antiquities Act of 1906, a law mainly aimed at protecting prehistoric remains from looters and vandals. This statute gave the President the authority to designate historic landmarks, structures, and objects located on Federal lands as national monuments. To protect these historic properties, the law required people to acquire

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<sup>14</sup> Ibid, 6.

<sup>15</sup> Ibid, 9.

<sup>16</sup> Ibid, 10.

<sup>17</sup> Advisory Council on Historic Preservation, *Federal Historic Preservation Case Law, 1966-1996*, (Washington, D.C.: Advisory Council on Historic Preservation, 1996), 3.

permits before embarking on archeological activities on Federal lands and established penalties for violation.<sup>18</sup> The National Park Service (NPS), was established in 1916 to “promote and regulate the use of the federal areas known as national parks, monuments, and reservations,” several of which had been founded before the turn of the 20<sup>th</sup> century. These two early acts signified the nation’s commitment to conserving natural resources and Native American cultures.<sup>19</sup>

Amid Roosevelt’s rebuilding of the United States’ economy, he signed the Historic Sites Act in 1935, a piece of legislature that would increase the government’s involvement with policy “to preserve for public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States.”<sup>20</sup> It provided a context for historic surveys and research; a foundation for acquiring, restoring, maintaining, and operating historic properties; and means to interpret the heritage with educational material like historic markers. During the New Deal, the federal government had the ability to focus monetary and professional resources to historic preservation. However, those resources were relatively short lived, as they were soon shifted to the war effort in the 1940s. While the act did not reach its maximum potential at the federal level during the early years, it established a precedent for what would later become the more influential legislation, the 1966 National Historic Preservation Act (NHPA).<sup>21</sup>

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<sup>18</sup> Ibid, 3.

<sup>19</sup> William J. Murtagh, *Keeping Time*, 3<sup>rd</sup> Edition, (Hoboken, NJ: John Wiley & Sons, Inc, 2006), 39.

<sup>20</sup> Ibid, 43.

<sup>21</sup> Ibid, 44.

In 1947, the preservation activities provided through Federal legislature were supplemented with the founding of the National Council for Historic Sites and Buildings, later to become the congressionally-chartered National Trust for Historic Preservation (NTHP). The NPS, founded three decades earlier, was instrumental in the Trust's creation, as the Trust's earliest advocates were some of the NPS's top directors. The NTHP was, and remains, the largest national organization for historic preservation, providing information and services to local, state, and national public and private organizations on a range of topics. The evolving constituency of the Trust reflected the changing role of historic preservation. The movement was "no longer dominated by informed, affluent amateurs who were the champions of individual house museums, but now increasingly composed of more knowledgeable individuals whose concern was the overall planning and protection of entire historic districts."<sup>22</sup> Today, many more preservation organizations exist at the national level, offering support to state and local governments as well as interested citizens and smaller organizations. Even more preservation organizations exist on the local and regional scale, serving specific regions or specialized in specific topics.

## A BITTERSWEET CATALYST FOR HISTORIC PRESERVATION

Urban preservation quickly gained momentum during the years following World War II. The proliferation of new, post-WWII, suburban communities and the

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<sup>22</sup> Ibid, 30.

subsequent rise of sprawl created a substantial shift in government priority and citizen mindset. Federal financing made it easy and affordable to move into a new home in the suburbs. No longer were the cities the most important driver of state and federal policies; the majority of Americans now lived outside increasingly dangerous and dismal cities. As the middle- and upper-income residents of cities moved into the suburbs, cities nationwide began to fail economically. To “fix” the cities and help the automobile-oriented suburbs, major federal initiatives set the stage for a new preservation mindset. Responding to the plight of the city, the Housing Act of 1949 and the Urban Renewal Act of 1954 were meant to revitalize inner cities by clearing deteriorated neighborhoods. Criteria for funding were vague, and the results were often devastating. The other major initiative of the time was the 1956 Interstate Highway Act, which provided over \$41 million to states for the construction of highways, many of which transected cities and destroyed neighborhoods.<sup>23</sup>

Urban renewal and the interstate network both called for the widespread clearing of land, and it was in the cities that effects were experienced most significantly. Extensive social displacement and widespread demolition of neighborhoods were particularly devastating. In response, the preservation field became increasingly activist and politicized. It was around this time that the use of and purpose for historic districts reached a critical turning point. Enraged by the wholesale demolition of older neighborhoods without regard to community concern, activists joined forces with preservationists to oppose top-down planning and advocate for the cities’ traditional

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<sup>23</sup> Dolores Hayden, *Building Suburbia*, (New York: Vintage Books, 2003), 166.

neighborhoods. Until this point, preservation was a small and amateur field; the stereotypical historic district protected only exemplary historic architecture. Urban renewal added representative and typical architecture to the types of places worthy of preservation. In her 1961 seminal book, *The Death and Life of Great American Cities*, Jane Jacobs explained in depth the benefits of the urban neighborhood as well as the extreme shortcomings of urban renewal programs, making public the ideas already being fought for by preservationists. The first sentence of her introduction reads, “This book is an attack on current city planning and rebuilding.”<sup>24</sup> Her influential book translated the neighborhood concept into a language that could be understood by city- and suburban dwellers, planners and architects. It became an important link between the initiatives of top-down planning and the objectives of historic preservation.

Other individuals published like-minded books and articles, encouraging a reexamination of planning values. Paul Gans in his *The Urban Villagers*, Paul Davidoff and Thomas Reiner with “A Choice Theory of Planning,” Davidoff in “Advocacy and Pluralism in Planning,” and Martin Anderson in *Federal Bulldozer* all cautioned practitioners of superblock planning and the failures of the clearance strategy of urban renewal. Kevin Lynch published *The Image of the City*, bringing to light new ways in which people interact with urban surroundings.<sup>25</sup> Responding to the growing cynicism, several federally funded studies, of areas like Boston, Savannah, and Philadelphia, were

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<sup>24</sup> Jane Jacobs, *The Death and Life of Great American Cities*, Modern Library Edition, (New York: The Modern Library, 1993), 5.

<sup>25</sup> Eugenie Ladner Birch and Douglass Roby, “The Planner and the Preservationist,” *Journal of the American Planning Association* 60, no. 2 (Spring 1994): 200.



also undertaken and stressed the historic and residential values.

While urban renewal projects were almost entirely based on clearing and replacing deteriorated neighborhoods, preservation was not entirely absent. The Urban Renewal Program of 1954 and the Housing Act of 1954 made some funding available for rehabilitating older buildings and for the development of historic preservation programs at the local level. While the rehabilitation and preservation programs provided in those acts were not mandated, as they would later become in the 1966 Demonstration Cities Act, they did provide options for urban renewal projects. The late 1950s urban renewal-funded project of College Hill in Providence, Rhode Island, used federal funding to administer a building survey and prepare a preservation plan, resulting in “historic area zoning.” The methodology, which included techniques for implementing a historic zoning ordinance, for administering a historic building survey, and for integrating preservation into a redevelopment plan, was published in a report that would become an early model for how historic districts might be created.<sup>26</sup>

Directly influencing the passage of the 1966 National Historic Preservation Act (NHPA) was the book, *With Heritage So Rich*, developed by a committee on historic preservation under the United States Conference of Mayors. The language in the book, which offered a philosophy for preservation planning, evolved into the language of the NHPA.<sup>27</sup> This monumental law, and its later amendments, laid the foundation for modern preservation. The benefit was twofold. Sites, buildings, districts, objects, and structures

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<sup>26</sup> David Hamer, *History in Urban Places*, (Columbus: Ohio State University Press, 1998), 14.

<sup>27</sup> William J. Murtagh, *Keeping Time*, 3<sup>rd</sup> Edition, (Hoboken, NJ: John Wiley & Sons, Inc, 2006), 49.

were now federally recognized as possessing historical, architectural, archeological, or cultural value, meaning more than just the exemplary architecture or highly patriotic places could be preserved; and, through Section 106 of the code and extremely important for the time, preservationists had a “legal basis by which their voices could be heard when federal dollars or licenses were invoked to make a change in the built environment.”<sup>28</sup> Before federal monies are spent, the newly created Advisory Council on Historic Preservation would be given an opportunity to comment on the historical, architectural, archeological, or cultural value of the National Register site in question. Any adverse effects on sites containing those values listed above would be avoided. In addition to the National Register of Historic Places and Advisory Council, states received enabling legislature to create State Historic Preservation Offices and Certified Local Governments, which would oversee preservation activity on state and local levels. Financial assistance was also available for the planning and rehabilitation of historic districts and individual landmarks on the National Register. Important for this thesis, the law equated the treatment of districts to those of sites, buildings, objects, and structures. Properties on the National Register would not receive the same, stringent legal protection potentially provided to those under a local zoning code, but were protected from negative government action. Although it is local regulation, not federal regulation that holds the most power, with a national preservation policy opponents of urban renewal had a legal mechanism for protecting historic neighborhoods from destruction by federal agencies.

During the same year, two other pieces of federal legislation with forceful

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<sup>28</sup> Ibid, 53.

preservation components were passed. The Department of Transportation Act required the Secretary of Transportation to preserve natural and man-made sites along highway routes. Similarly, the Demonstration Cities Act created a policy under which the Secretary of Housing and Urban Development must recognize the importance of preservation and fund preservation projects. The latter policy “laid the basis for an entirely new potential direction for urban renewal through that agency.”<sup>29</sup> Three years later, Congress passed the National Environmental Policy Act, which gave responsibility to federal agencies to assess the environmental impact of projects on their surroundings, stressing the importance of preservation. Cities could now benefit from the legal protection and receive federal money to use funds to rehabilitate and upgrade urban housing stock. This preservation trend grew stronger; urban renewal now “included concern and assistance for the retention, protection, and restoration of existing housing and neighborhoods.”<sup>30</sup>

Savannah, Georgia, and the Society Hill neighborhood in Philadelphia are exemplary of later preservation-oriented urban renewal. In Savannah, a 1968 National Historic Landmark inventory provided a basis for their historic zoning district designation in 1973. In Philadelphia, rather than clearing the entire neighborhood, HUD staff inspected the blocks building-by-building to determine which structures were to be preserved and upgraded, which were to be rehabilitated, and which were to be demolished and replaced. While heralded for its focus on preservation, the program

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<sup>29</sup> Ibid, 53.

<sup>30</sup> David Hamer, *History in Urban Places*, (Columbus: Ohio State University Press, 1998), 14.

also received criticism for the widespread displacement of the neighborhood's low-income residents, replaced with a nearly homogenous, upper-income, white population. Though still not the prevailing trend, both examples became models for new methods of incorporating historic preservation into urban renewal.<sup>31</sup>

While the 1960s provided the nation with a legal basis for protecting historic sites, buildings, districts, objects, and structures, in the 1970s and 1980s Congress offered economic incentives for saving and reusing many of them. The 1976 Tax Reform Act, replaced in 1981 by the Economic Recovery Tax Act and later the Tax Reform Act of 1986, provided significant tax incentives for rehabilitating National Register-certified historic, income-producing properties. Until then, economic incentives generally focused on new construction; historic buildings could now feasibly compete with new construction. Economic incentives spurred a wave of new nominations to the national register, individual buildings and districts alike.

With legal protection and economic benefits in place, historic preservation became "established as a significant land use control."<sup>32</sup> No longer was preservation affixed only to individual landmarks and house museums; the 1950s and the decades following expanded the scope of the field. This is not to say that preservation regulations were evenly or uniformly applied to all cities across the country. The progress made in preservation and planning policy during the middle decades of the 20<sup>th</sup> century had significant effects on the progress of the historic preservation field.

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<sup>31</sup> Ibid, 15.

<sup>32</sup> Barry Cullingworth and Roger W. Caves, *Planning in the USA*, 3<sup>rd</sup> Edition, (London: Routledge, 2009), 233.

## THE NARROWING GAP BETWEEN PRESERVATION AND PLANNING

As illustrated above, the wide gap between preservation and planning objectives reached a turning point in the 1960s and 1970s. An early analysis of this change is given in an article titled, “The Planner and the Preservationist,” by Eugenie Ladner Birch and Douglas Roby. Published in 1984, the authors note the narrowing scope of the planning field from regional and citywide plans to the inclusion of neighborhood planning; and the broadening scope of preservation to include districts and planning, not just individual landmarks.<sup>33</sup> The two fields’ objects grew closer. In the 1970s and 1980s, preservationists realized the organizational value of preservation plans in order to systematically implement various preservation activities. As the value of preservation planning continued to increase, it took a variety of forms. The range of preservation plans was summarized by Kathryn Ritson in her Masters thesis titled, “Preservation Planning at the Local Level: A Case Study Analysis,”

Some [preservation plans] focus on defining historic contexts and architectural styles, while others are more concerned with economic development and downtown revitalization. While some are broad policy documents, others put forth specific recommendations with defined roles for staff and a time frame for accomplishing each goal. In some localities preservation goals are incorporated with broader planning interests such as housing and tourism, while in others they are treated alone, focused on the creation of historic commissions and ordinances.<sup>34</sup>

Preservationists and planners began combining the techniques and tools of planning,

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<sup>33</sup> Eugenie Ladner Birch and Douglass Roby, “The Planner and the Preservationist,” *Journal of the American Planning Association* 60, no. 2 (Spring 1994): 194.

<sup>34</sup> Kathryn L. Ritson, *Preservation Planning at the Local Level: A Case Study Analysis*, Master Thesis, Philadelphia: University of Pennsylvania, 2009, 1.

like community and economic development strategies, with the value of neighborhood identity and historic preservation to more comprehensively address broader planning issues, like housing or downtown revitalization. Planners began to incorporate public opinion and civic engagement into the planning process as a means of eliciting information about the importance of a place.

While not to suggest that the two fields have merged into one, planning has incorporated preservation ideals to the extent that many planners have begun to build new towns and neighborhoods that are designed to emulate the structure, virtues, and even architecture of traditional ones. New Urbanism, also known as Neotraditional Planning and Traditional Neighborhood Development, was created as a response to the sprawling nature of most suburban developments. The advocates of New Urbanism, notably Andres Duany and Elizabeth Plater-Zyberk, have created dozens of new developments based on a developed set of principles.<sup>35</sup> Featured in a *Preservation* article, titled “Their Town,” Duany and Plater-Zyberk explain the process by which their new towns are created:

The architects began by probing the principles that govern the planning of such old cities and sectors as Charleston, New Orleans, and Washington, D.C.’s Georgetown and of such great prewar suburbs as Mariemont, Ohio. They explored typical street arrangements, the placement of landmarks, the width of sidewalks, the space from one building to the next, how stores and houses were intermingled, how buildings were grouped according to size and type, how their cornice lines, materials and other architectural details were consistent. The designers studied what lures people into the streets (activity, enticing destinations, sidewalks flanked by parked vehicles that serve as barriers against moving vehicles), how far people are willing to walk for an errand (a quarter of a mile), and what delights people about traditional American towns.<sup>36</sup>

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<sup>35</sup> Barry Cullingworth and Roger W. Caves, *Planning in the USA*, 3<sup>rd</sup> Edition, (London: Routledge, 2009), 218.

<sup>36</sup> Andrea Oppenheimer Dean, “Their Town,” *Historic Preservation* 44, no. 3 (May-June 1992): 58.

Though the majority of their work results in new suburban towns, some principles are being incorporated into urban planning principles today. The value of the human scale and walkability, the importance of diversity in use and population, and the promotion of historic structures and landscapes are foundational principles in New Urbanism planning that are found in many older, urban residential neighborhoods already. These principles embody many of the physical characteristics in local historic districts.

The blurring line between the two fields has provided preservation with new sets of tools for implementing preservation objectives. Tools traditionally reserved for the planning field, including ordinances, districting, design guidelines, planning, and the purchase or transfer of development rights, have been borrowed and adapted to save buildings and districts. New preservation tools, like the neighborhood conservation district, are beginning to tackle some of the common, socioeconomic issues in many low-income historic neighborhoods. The efficacy of these tools for neighborhood conservation is explored in the remainder of this thesis.

## CHAPTER 2 – Philadelphia Zoning Code

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### INTRODUCTION

Zoning is a valuable planning tool that has the potential to protect the character of places by regulating dimensional standards, development standards, and permitted uses. Basic standards and incentives allow zoning to implicitly shape the built environment, while overlay zones and special districts can explicitly protect or shape the existing environment. Not all significant or historical places necessitate or desire a special overlay district such as a historic district or neighborhood conservation district, but residents typically expect that their municipality’s zoning code will protect neighborhoods from undesirable development impact.

Philadelphia’s present zoning code is an extremely long and complicated document that has been amended over 1,000 times since its adoption in 1962. Analysis of its use has concluded that it composes an inefficient set of regulations that can impede economic and physical progress in the city. Years of dysfunctional zoning procedures and complicated administrative processes has added to a growing argument for zoning reform in Philadelphia. Finally, in 2007, a five-part process began to overhaul the existing zoning code. In May of that year, residents of Philadelphia approved the creation of the Zoning Code Commission (ZCC), to “conduct a comprehensive analysis and make recommendations regarding reforms to the Philadelphia Zoning Code.”<sup>37</sup> The authorizing

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<sup>37</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Interim Report: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 1.



legislation for the newly created ZCC reads:

Philadelphia's Zoning Code should be consistent and easy to understand, should help shape future construction and development, and should enhance and improve Philadelphia's development approval process while encouraging positive development and protecting the character of Philadelphia's neighborhoods.<sup>38</sup>

Early in the process, the ZCC agreed on seven goals to guide zoning code reform: to simplify base districts, simplify overlay districts, simplify approvals, protect neighborhoods, promote sustainability, promote quality and design, and improve readability and reorganization.<sup>39</sup> The ZCC hired consultants, Clarion Associates, LLC, and Duncan Associates, to work with the ZCC during the project. The five-part process is expected to take several years to accomplish, and includes a comprehensive assessment of the existing code, a best practices report, recommendations for the new code, rewriting the new code, and finally remapping the new code. The consultants are rewriting the code in several modules; the first module, administration and procedures, was released in February 2010. The second, districts and uses, is scheduled to be released in April 2010 and the final, development standards should be finished by July 2010. By March 2010, the ZCC and consultants had completed the assessment, best practices report, recommendations, and was midway through the rewriting phase. Refer to Appendix B for a schedule of the zoning code reform process.

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<sup>38</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Executive Summary: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 1.

<sup>39</sup> Ibid, 1.

## ZONING IN PHILADELPHIA

Before analyzing the major zoning topics affecting neighborhoods, it is important to understand how, and by whom the zoning code is currently enforced. In Philadelphia, the department of Licenses and Inspections (L&I), is responsible for enforcing the zoning code regulations – by processing applications, issuing permits, and conducting inspections. The L&I staff examine applications to determine whether the proposed work complies with the zoning code. If it does, the permit is approved and the applicant can proceed. If it does not, L&I will issue either a Notice of Refusal, which can be appealed to the Zoning Board of Adjustments (ZBA), or a Notice of Referral, which sends application to the ZBA for review. Composed of a panel of experts, the ZBA authorizes variances, reviews special exceptions to the code, grants special use permits, addresses zoning issues when there is an alleged error in the L&I decision, and deals with other matters of importance related to the enforcement of the zoning code. All ZBA hearings are public and provide opportunities for other city agencies and the general public to comment on or object to the proposed project. Ultimately, the ZBA has the power to “reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from; and may make such requirement, decision or order, with or without conditions, as ought to be made; and, to that end, it shall have all the powers of the agency from which the appeal is taken.”<sup>40</sup>

To inform residents of pertinent zoning issues, many neighborhood associations

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<sup>40</sup> “Overview.” Board Appeals & Hearings. City of Philadelphia Licenses & Inspections. <http://www.webapps.phila.gov/li>.

and community development corporations maintain zoning committees that help publicize important zoning issues and provide residents with technical assistance related to the permit application process. While these committees do not have legal power to approve or deny zoning applications, they can be powerful in providing the ZBA with recommendations on what they perceive is best for the neighborhood. Many also hold neighborhood meetings with the developers of projects within the neighborhood to learn about the project, ask questions, raise concerns, and provide feedback.

The processes for making citywide-scale changes, like amendments to master and comprehensive plans and the zoning code, differ. Amendments to plans of development are first reviewed by the Philadelphia City Planning Commission (PCPC), with a public notice and public meeting to review the proposal. Minor amendments must then be sent to Philadelphia City Council for the final decision. Major amendments are sent to the mayor, who must hold a public meeting or hearing to make the decision. Amendments to the zoning map or text, major or minor, are reviewed by the PCPC at a scheduled meeting, with an option to review it further after issuing a public notice and holding a public meeting or hearing. A public notice is then issued and the proposal is sent to City Council for the final decision, who must hold a public meeting or hearing before deciding. For a diagram of the application and review processes, please refer to Appendix C.

The standard procedures described above are complicated by a history of ZBA and City Council dysfunctions and politicking. Extensive community engagement

during the assessment phase has revealed widespread negative opinions about the nature of the ZBA review and approval processes. Interviews with professional code users have yielded comments that “suggested the Zoning Board of Adjustment is trying to regulate for what they think ‘should’ be in the code,” and that “the Zoning Board of Adjustment does not turn to the standards of the code when making decisions.”<sup>41</sup> For example, a former ZBA chair was also president of a local sheet metals workers union in Philadelphia and often required large projects to incorporate air conditioning systems into projects or he would not grant the zoning variance. Air conditioning systems are not required by the building code, but he insisted they incorporate them anyway. Clearly there was a blatant conflict of interest.<sup>42</sup>

City Council, which must approve any zoning map or text amendment, also contributes to the dysfunctional code. Nearly all the professional code users interviewed during the recent zoning code assessment phase “agreed that the biggest challenge for both staff and applicants is keeping up with the continual amendments enacted by City Council resulting in repeatedly adding overlays.”<sup>43</sup> The consultants hired to assist the ZCC with its rewriting process noted that “Some land use restrictions are imposed on the basis of councilmanic district boundaries rather than mapped zoning boundaries.”<sup>44</sup>

Mentioned above, the politics and dysfunctions behind zoning decisions only add

<sup>41</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Interim Report: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 76.

<sup>42</sup> Tom Ferrick Jr., “Keep Cool, and That’s an Order,” *Philadelphia Inquirer*, July 24, 2002, B01. *NewsBank*; Tom Ferrick Jr., “Need for AC Freezes School Out,” *Philadelphia Inquirer*, December 23, 2001, B01. *NewsBank*.

<sup>43</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Interim Report: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 79.

<sup>44</sup> *Ibid*, 5.

to the inconsistencies and unreliability of the zoning code itself. When asked if the existing code protected neighborhoods from incompatible development, professional users of the code commented that, “the code itself does not protect neighborhoods... if [the development] is permitted as-of-right; the complex (uncodified) process protects neighborhoods.”<sup>45</sup> Because so many applications require variances, the long process and unofficial procedures give civic groups and Councilpersons more opportunities to influence projects.

## ANALYSIS OF THE CURRENT ZONING CODE

The following zoning topics were selected for this study based on their reference to Philadelphia’s vernacular, residential neighborhoods and buildings. The topics, discussed in the general order in which they appear in the new zoning code, are: zoning code format, procedures and enforcement, public involvement, city and neighborhood zoning and planning, form and design standards, nonconforming properties, and district consolidation.

Below, each topic is first discussed in terms of its how it is handled in the current zoning code. Following current assessment is a discussion of best practices, drawn from both the author’s and the zoning consultants’ research, and an analysis of the consultants’ recommendations. Several topics, including zoning code format, procedures and enforcement, public involvement, city and neighborhood zoning and planning, and

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<sup>45</sup> Ibid, 78.

nonconforming properties, are analyzed based on the proposals included in the draft, *Module 1 – Administration and Procedures*, created by the consultants. The remaining topics, form and design standards and district consolidation, are analyzed based on the consultants’ *Detailed Recommendations*. The *Executive Summary* of the assessment of the current zoning code, created by the consultants and publicized by the ZCC, can be found in Appendix D.

### *Zoning Code Format*

One of the most common issues of contention is the format and usability of the current zoning code. The problems stem from the fact that the zoning code has been amended at least 1,000 times since its adoption, creating a document that surpasses 600 pages. The number of zoning districts is “dizzying,” the code is “difficult to navigate,” and there is an overall “lack of organization.”<sup>46</sup> Several topics, such as parking and signage, have regulations scattered around different chapters rather than being organized in a logical and easy-to-find manner.<sup>47</sup> The unconsolidated rules and regulations make chapter headings “misleading.”<sup>48</sup> Additionally, regulations are unpredictable: some vary depending on which side of the street or in which councilmanic district the property is located. In sum, the number of amendments for special exceptions and special districts has caused the current zoning code to “lack internal consistency” or predictability.<sup>49</sup>

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<sup>46</sup> Ibid, 5.

<sup>47</sup> Ibid, 5.

<sup>48</sup> Ibid, 6.

<sup>49</sup> Ibid, 7.

Without consistency, the code lacks regulatory strength.

A usable and accessible code is important so that neighborhoods can plan ahead and residents can rely on the code to protect the important qualities of their neighborhoods. A good code should be able to “‘level the playing field’ for all.”<sup>50</sup> Most importantly, the new code will be consolidated so that regulations which are currently scattered throughout the current zoning code are easier to find. Consolidation helps to avoid duplication and inconsistency. To do so, the number of chapters will be reduced from 21 to nine. For example, all parking requirements will be consolidated in a section of the development standards chapter, with references in other chapters where appropriate.

Several tables will be used to improve readability and organization. They combine related information in an easy-to-read matrix that allows users to compare and contrast regulations as applied to different types of properties. The tables will consolidate information such as procedures; administrative review bodies; permitted, certified, special, and regulated uses; development standards such as required lot size, setbacks and build-tos, maximum building height, and open space requirements; signage; and off-street parking space requirements.<sup>51</sup> Many will be organized by zoning district to make it easier for a property owner to see all the information that relates to his or her particular property.

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<sup>50</sup> Ibid, 7.

<sup>51</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Executive Summary: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 3.

Graphics are increasingly being used in zoning codes as a way to help the average layperson interpret the often confusing zoning code text. The SmartCode, a model Smart Growth code created by Duany, Plater-Zyberk and Company (DPZ), integrates “zoning, subdivision regulations, urban design, public works standards and basic architectural controls into one compact document.”<sup>52</sup> The substance of this code is discussed in subsection *Form and Design Standards*, but the code format relies heavily on graphics and tables to illustrate its principles. See Appendix E for an example of an illustrated diagram from the SmartCode publication. However, although illustrations are useful for understanding the regulations, they run the risk of misinterpretation; the new zoning code will incorporate some diagrams and graphics where appropriate. Flowcharts will illustrate approval processes and graphics will help to interpret development standards and other regulations. The new zoning code states, “In the case of a conflict between the text of this Zoning Code and any illustration, graphic, picture, or flowchart, the text shall govern.”<sup>53</sup>

Overall, the proposed changes are highly beneficial to the usability of the zoning code. The average homeowner will be able to access the zoning code online to easily see how it affects his or her property. Diagrams will organize complex processes and graphics will help illustrate development standards. A clear and readable code can eliminate conflicting interpretations and allow residents and City officials to rely on the text rather than precedent and interpretation.

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<sup>52</sup> “The SmartCode.” SmartCode Central. <http://www.smartcodecentral.org/about2.html>.

<sup>53</sup> Clarion Associates and Duncan Associates, *Philadelphia’s New Zoning Code: Module 1 - Administration and Procedures*, Philadelphia: Zoning Code Commission, February 2010, 9.



## *Procedures and Enforcement*

During public outreach sessions, the consultants realized that stakeholders often focused “more on the city’s broken zoning procedures than on the substantive weaknesses of current zoning rules.”<sup>54</sup> Because of the inconsistencies within the code, different city officials and staff members have varied interpretations of its purposes, regulations, and procedures. With so many inconsistencies, the code has lost internal strength, and homeowners and developers have come to rely on use and building variances to accomplish their proposals, whether or not the current zoning code allows them. As a result, the ZBA has been both bogged down with minor cases and riddled with politics, rendering the approval process difficult and “broken.” The reliance on variances has unfortunately allowed homeowners or developers to more easily bypass the regulations that were initially created to protect neighborhoods and buildings. Ideally, the zoning code should directly address the majority of applications, with only the complex or sensitive issues sent to the ZBA for review. The consulting team pointed out that they “are aware of no other U.S. city that relies so heavily on its Zoning Board of Adjustment for zoning administration.”<sup>55</sup> In Philadelphia, there are no limitations “addressing what can be requested or approved as a use variance.”<sup>56</sup> A reliance on use variances not only makes the zoning code weak, it can make enforcement unpredictable. Under the zoning

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<sup>54</sup> Clarion Associates and Duncan Associates, *New Philadelphia Zoning Code: Best Practices Report*, Philadelphia: Zoning Code Commission, June 2009, 3.

<sup>55</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Interim Report: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 57.

<sup>56</sup> Ibid, 60.

code, similar permits for similar minor projects should be handled correspondingly; a subjective third party can add bias to their decision depending on the applicant, the location, and numerous other factors.

Sending fewer cases to the ZBA will help to alleviate uncertainty, but only if the code itself is strengthened to make regulations and procedures predictable and reliable. Additionally, if fewer cases are sent to the ZBA and more approved at the staff level, residents want to be sure there are opportunities to be informed and comment on larger proposed changes, even those that are as-of-right. Balancing the changes in approval process with public involvement is the challenge.<sup>57</sup> Analysis largely related to public participation will be discussed in a subsequent section, *Public Involvement*, though there is some overlap. The consultants identified several specific best practices that can lessen the burden on the higher reviewing party, streamline the review process, and allow for public input.

Sacramento County, California allows public comment periods without holding a public hearing. Notices are posted that inform residents of the nature of the project and the time period in which they are allowed to submit comments to the planning department. The comments can be considered during the decision-making process, but the planning commission is not bound to explicitly address the comments; their task is to determine whether the project meets the code requirements. Comments can help shed light on a particular situation from a new perspective and provide information

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<sup>57</sup> Clarion Associates and Duncan Associates, *New Philadelphia Zoning Code: Best Practices Report*, Philadelphia: Zoning Code Commission, June 2009, 3.

not disclosed by the applicant. Public hearings are only required when the planning department's decision is appealed.<sup>58</sup>

Several cities are adopting procedures that require applicants to hold meetings with neighborhoods to discuss details of a proposed project. The meetings are held before the application is submitted, and often apply only to large-scale developments or developments that significantly differ from the existing surroundings. Residents are able to hear project proposals and voice concerns before projects are up for review at a higher level.<sup>59</sup>

“Call-up” provisions allow decisions to be made by staff or lower review bodies but give the city council or zoning board an opportunity to request to review the decision before it becomes effective. In New York City, this process can be used on ten specifically listed types of decisions and the city council has 20 days to choose to review the decision made by the planning commission. If the city council chooses not to review the decision, the planning commission's decision becomes final.<sup>60</sup>

Similarly, several cities provide procedures for complex or controversial issues to be “bumped up” to a higher body. Some codes allow the planning director to refer the decision to a higher body if the decision is in some way controversial or complex. Others allow staff or lower bodies to make the decision and then allow a certain amount of time before the decision is effective to allow for public objections. If an objection is submitted

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<sup>58</sup> Ibid, 4.

<sup>59</sup> Ibid, 4.

<sup>60</sup> Ibid, 4-5.

in time, the case is “bumped up” to a higher body for review.<sup>61</sup>

The final alternative posed by the consultants is the use of hearing officers. In this situation, public hearings are still held, but a trained hearing officer, rather than an entire planning commission or zoning board, conducts the meeting and has authority to make decisions. While the public hearings still require time and expense, they are “faster, more efficient, and more objective,” since the elected officials or political appointees are removed from the situation and the hearing officer can better keep discussion focused on the matters at hand.<sup>62</sup>

Drawing from best practices and public feedback, the consultants proposed two new changes to the zoning code that help to redefine the role of the ZBA and public input. Included in “Module 1” of the new code is a “bump-up” provision, described above. Projects over “100,000 square feet of gross floor area of non-residential use or more than 25 dwelling units...located on property adjacent to a residential zoning district,” can be referred by the L&I to the ZBA for review.<sup>63</sup> Although the consultants encourage the new code to allow fewer cases to go before the ZBA, they also understand the importance of a higher review board and a public hearing to allow for public comment, especially those related to large-scale projects. They recommended requiring pre-application meetings with neighborhood organizations for large-scale projects to discuss the project and attempt to alleviate or address concerns that can slow approval processes down once

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<sup>61</sup> Ibid, 5.

<sup>62</sup> Ibid, 5.

<sup>63</sup> Clarion Associates and Duncan Associates, *Philadelphia's New Zoning Code: Module 1 - Administration and Procedures*, Philadelphia: Zoning Code Commission, February 2010, 30.

they reach higher review boards. While this latter recommendation will be analyzed in the Public Involvement subsection below, it is important to note that pre-application neighborhood meetings have the potential to speed up large-scale project review by seeking community support earlier in the process.

The “bump-up” and the pre-application neighborhood meeting provisions were met with a significant amount of public hesitation. To seek feedback and alleviate concern, a significant amount of public outreach is taking place. If the code format and language are strengthened to increase predictability and consistency, these provisions will both expedite development review processes and provide concerned residents opportunities to review and comment on larger projects that might otherwise be permitted by right.

To reduce the number of cases that must be seen by the ZBA, limitations will be set on the types of variances granted. Additionally, increasing the authority of staff at L&I and the PCPC to make minor amendments to plans and standards or authorize minor variances for non-conforming uses can also eliminate the need to send minor issues to City Council or the ZBA for approval. Allowing staffers to approve zoning variances is great in theory, but the criteria for approval must be straightforward and require little interpretation, otherwise a variety of code interpretations will result in a political atmosphere worse than what currently exists. Some citizens are concerned that without an official list of which types of variance applications do not require a public hearing before the ZBA the process “would become tempting for corruption and kickbacks to

‘smooth the way’ for proposed changes.”<sup>64</sup>

Most importantly, simplifying and clarifying procedures and regulations will make the zoning code easier to understand and more reliable. The procedures section will include diagrams to illustrate the application process, and a new section in the code will specifically outline the duties of each agency that may be involved in reviewing applications. Their powers related to zoning will be explained for City Council, City Planning Commission, Zoning Board of Adjustment, Department of Licenses and Inspections, Design Review Committee (should this committee be created), Historical Commission, Art Commission, Streets Department, and Water Department.<sup>65</sup> Clarifying each agency’s authority within application and review process can help to eliminate confusion and prevent agencies from overstepping their authority. In whole, the recommendations posed by the consultants for improving procedures have the potential to significantly improve the consistency of the application process, if, however, the format is fixed to increase the code’s strength.

### *Public Involvement*

Public involvement in the decision-making process is another top tier priority

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<sup>64</sup> Portfolio Associates, Inc., *ZCC - Raw Data from Recommendations Survey*, Philadelphia: Zoning Code Commission, 9.

<sup>65</sup> Clarion Associates and Duncan Associates, *Philadelphia’s New Zoning Code: Module 1 - Administration and Procedures*, Philadelphia: Zoning Code Commission, February 2010, 10-18.

identified in the councilmanic workshops. This priority is mentioned in several other topics, including *Procedures and Enforcement*, *City and Neighborhood Planning and Zoning*, and *Form and Design Standards*. A major issue noted in much of the public feedback is the lack of “information about zoning cases that may affect them,”<sup>66</sup> Neighborhood organizations are often responsible for distributing information about cases that affect their area, but complain that many times, the ZBA, PCPC, L&I, and developers lack effective notification procedures. Those neighborhoods without a neighborhood-based organization are “especially disadvantaged.”<sup>67</sup> All ZBA hearings are public and other city agencies and the general public have the opportunity to comment on or object to the proposed project. Often, this is the public’s only opportunity to voice opinion. A community should have all the necessary information to support or oppose a major change in their neighborhood. However, cases that are approved without variances do not require any public notification or public hearing because they are not reviewed by ZBA or City Council.

Others noted they felt “public opinion does little to influence zoning decisions.”<sup>68</sup> It is sought late in the application or review process, at a time when decisions have essentially already been made and there is little that public input can do to alter them. Some felt that opinions from those that live near proposed development or zoning changes are outweighed by Councilpersons’ input. Residents believe that “widespread

<sup>66</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Executive Summary: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 5.

<sup>67</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Interim Report: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 85.

<sup>68</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Executive Summary: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 5.

community opposition to a proposed development does not seem to influence zoning decisions.”<sup>69</sup>

Throughout the new zoning code, sections have been altered to clarify and simplify the zoning process as well as make the code and processes accessible to the community at large. A new table will summarize procedures for zoning processes, including how the public is notified of the zoning issue and whether a public hearing is required.<sup>70</sup> The public notice requirement section will be expanded to address the required content in the notice as well as standards for distributing sign notices, mailed notices, and newspaper notices.<sup>71</sup> Individuals and community organizations will know exactly where and when to look to find notices about zoning decisions that might impact their neighborhood. A new section on public hearings consolidates standards which are currently scattered, and makes official the provisions which are required when the ZBA conducts a public hearing. New provisions, including one specifically allowing anybody to testify in a public hearing regardless of legal standing to appeal or the presence of an attorney, makes it easier and cheaper for more people to comment on projects.

Reducing variances and unclogging the ZBA are important priorities for making the zoning code effective, but residents are concerned that their opportunities for review will be wiped away. Many neighborhood organizations have used the broken procedures

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<sup>69</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Interim Report: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 86.

<sup>70</sup> Clarion Associates and Duncan Associates, *Philadelphia's New Zoning Code: Detailed Recommendations*, Philadelphia: Zoning Code Commission, September 2009, 12.

<sup>71</sup> Clarion Associates and Duncan Associates, *Philadelphia's New Zoning Code: Module 1 - Administration and Procedures*, Philadelphia: Zoning Code Commission, February 2010, 23-27.



to their advantages by relying on the public ZBA hearings to voice opposition or concern for projects that affect their community. The pre-application neighborhood meetings mentioned above attempt to address this issue. Because of the controversial and complex nature of pre-application neighborhood meetings, little had been decided by February 2010 when *Module 1* was released. To help the ZCC and consultants understand community concerns, the Philadelphia Chapter of the AIA and the Penn Project for Civic Engagement have worked closely with stakeholders, including neighborhood organizations and developers, in December 2009 and January 2010, to discuss if this pre-application step is appropriate and, if it is, how it might be implemented.<sup>72</sup>

In the recommendations publication, the consultants suggested that the large projects, including those using large areas of land or proposing large or multi-building complexes, require a pre-application meeting with the neighborhood where the project will be located. While this does add a step in the application process, the consultants explained that many cities find it speeds up the overall process. Residents can learn about the proposal and voice their concerns early in the process, rather than delay the project once it reaches the higher review bodies.<sup>73</sup> It also makes the proposal and review process more transparent by alerting residents earlier in the project planning process, rather than waiting until planning is nearly complete and it is being presented before the ZBA. Some believe the extra step could be a hindrance for potential developers who might

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<sup>72</sup> Clarion Associates and Duncan Associates, *Philadelphia's New Zoning Code: Module 1 - Administration and Procedures*, Philadelphia: Zoning Code Commission, February 2010, 21

<sup>73</sup> Clarion Associates and Duncan Associates, *Philadelphia's New Zoning Code: Detailed Recommendations*, Philadelphia: Zoning Code Commission, September 2009, 13.

otherwise want to invest in the city.<sup>74</sup> Most were generally supportive, but apprehensive about who would run the meeting and dubious about whether only one neighborhood meeting could accomplish anything. Proponents for the process discuss the successes their respective neighborhood zoning boards have had in mitigating potential disasters and retaining neighborhood character.<sup>75</sup> A code that facilitates conversation among residents, developers, and city planners will benefit a neighborhood where identifiable characteristics are important and need to be preserved or enhanced.

### *City and Neighborhood Zoning and Planning*

Professional code users identified a disconnect between City and neighborhood planning and zoning goals. Generally speaking, code users are unfamiliar with city goals and if goals do exist many believe “they do not appear to be implemented through the zoning code.”<sup>76</sup> Most neighborhood and community groups explained that the only plans with which they are familiar are neighborhood plans.<sup>77</sup> However, attorneys and developers explained that while they “were aware that neighborhood plans existed... they did not typically pay much attention to the details.”<sup>78</sup> As it stands today, there is no official comprehensive plan that guides development throughout the entire city.

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<sup>74</sup> Portfolio Associates, Inc., *ZCC - Raw Data from Recommendations Survey*, Philadelphia: Zoning Code Commission, 18.

<sup>75</sup> Ibid, 19.

<sup>76</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Interim Report: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 64.

<sup>77</sup> Ibid, 64.

<sup>78</sup> Ibid, 64.

Fortunately, this will change with the creation of the Philadelphia2035 Comprehensive Plan. The comprehensive plan is meant to “serve as the basic policy guide for the administration of [the] Zoning Code,” which is very important if the code is meant to be administered in a predictable, and unbiased manner.<sup>79</sup>

As it stands today, and as it will remain in the new zoning code, additional plans prepared by either the City, a public, or quasi-public agency can be adopted as amendments to the comprehensive plan.<sup>80</sup> In the absence of a comprehensive plan, there are many smaller plans created by the PCPC that target specific areas of the city. These include the blight certification and redevelopment plans which are created and adopted by the PCPC and serve as legal documents that guide development. Many of these adopted plans are developed by the Community Planning Division of the PCPC, whose responsibility is to facilitate neighborhood planning, urban renewal planning, citizen outreach, and transportation studies.<sup>81</sup>

Additionally, plans created by groups or organizations other than the PCPC, including CDCs, non-profit organizations or external planning agencies, may be accepted by the PCPC, but they do not obligate the City or its agencies from adhering to its recommendations. Those plans which are accepted are meant to inform or advise, but do not carry with them recommendations that the City must implement. One of the benefits for seeking acceptance is that the PCPC can then advocate public funding for

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<sup>79</sup> Clarion Associates and Duncan Associates, *Philadelphia's New Zoning Code: Module 1 - Administration and Procedures*, Philadelphia: Zoning Code Commission, February 2010, 4.

<sup>80</sup> Ibid, 4.

<sup>81</sup> “Community Planning Home Page,” Philadelphia City Planning Commission, 2010, <http://www.philaplanning.org/cpdiv/CP-index.html>.

the recommendations that are carried out. Until recently, there did not seem to exist any criteria or process for creating standardized neighborhood plans. In February 2010, the PCPC devised a set of community planning guidelines meant to help neighborhoods create community plans that can then be accepted by the PCPC. The main objectives of these guidelines are to “improve the linkage and coordination between community-based plans and City policies, plans, resources and implementing actions,” and to “ensure that efforts are made to include community residents in the planning process.”<sup>82</sup> To prepare a PCPC-accepted plan, the community must form a “broad-based Advisory Committee,” that includes PCPC staff, which will oversee the entire planning process. The process must include community outreach in the forms of open, public meetings and targeted stakeholder meetings. To make the new community-based plans consistent with adopted city goals, the guidelines require all future community-based plans to “be consistent with the citywide and district plans to be developed as part of the comprehensive planning process.”<sup>83</sup> Collaboration with neighborhoods will be especially important when the new zoning code is remapped by the PCPC. To facilitate this process, the PCPC has created the Citizens Planning Institute, CPI, which aims to educate and involve citizens about the rezoning and remapping process. Input from the CPI and goals and visions from the Philadelphia2035 Comprehensive Plan will be combined to help remap the city. The remapping process is illustrated in Appendix F.

The consultants explained that “projects should not be evaluated simply on the

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<sup>82</sup> Community Planning Guidelines, memo, Philadelphia City Planning Commission, February 16, 2010.

<sup>83</sup> Ibid.

basis of the [ZBA's] standards of hardship and practical difficult,” but that reviewing their “impacts and consistency with citywide plans and policies” is necessary.<sup>84</sup> With a new comprehensive plan and a formal community planning process in place, city planners, L&I staff, ZBA members, and neighborhood residents can begin to bridge the gap between neighborhood and citywide goals. Neighborhoods with plans not recognized by the city should work with the PCPC to improve the effectiveness of the plan and its ability to influence PCPC decisions. Failure to create an effective neighborhood plan can be detrimental to the physical characteristics of a neighborhood, especially when conservation is an explicit component. These new planning guidelines will guide project review at the city level so it does not completely ignore neighborhood plans, which are developed in collaboration with local residents and often accurately reflect the desires of the communities.

### *Form and Design Standards*

Protecting neighborhoods from incompatible development and negative impacts was identified as a specific top tier priority by participants in both the councilmanic workshops and the online survey.<sup>85</sup> Negative externalities such as congestion and property value impacts are not always taken into consideration during zoning decisions.<sup>86</sup>

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<sup>84</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Interim Report: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 58

<sup>85</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Executive Summary: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 5-6.

<sup>86</sup> Ibid, 5-6.

The lack of guidelines leaves few platforms from which a neighborhood can easily oppose incompatible or undesirable development.

Urban design is a controversial topic that has been discussed throughout the zoning rewrite process. Defined by [urbandesign.org](http://www.urbandesign.org), “urban design involves the arrangement and design of buildings, public spaces, transport systems, services, and amenities,” and gives “form, shape, and character to groups of buildings, to whole neighborhoods, and the city.”<sup>87</sup> This is not an entirely new concept to Philadelphia. Some special districts, including Center City and several neighborhood commercial districts have urban design standards that regulate things like setbacks and building bulk and require ground-floor retail, but standards are inconsistent as a whole.<sup>88</sup> Professional code users claim the ZBA and several local zoning committees unofficially regulate urban design issues.<sup>89</sup> For areas not part of a special district or without an active neighborhood organization, there are no contextual zoning elements or development standards that help integrate new development into the old. This can be particularly disconcerting when there are a significant number of nonconforming properties in an area. A new building can easily disrupt the cohesion and natural rhythm of a block or area even if it is being built as-of-right.

The issue of urban design standards and committees was discussed extensively

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<sup>87</sup> “Urban Design.” Urban Design: the Center for Design Excellence. <http://www.urbandesign.org/urbandesign.html>.

<sup>88</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Executive Summary: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 41-42.

<sup>89</sup> Ibid, 71.

in the assessment and best practices. Community organizations generally favor design standards that provide opportunities for the public to comment on the “design and fit of a community into an existing neighborhood.”<sup>90</sup> Architects, however, were supportive of design regulations that applied only to public space, but not to buildings.<sup>91</sup> There are several methods for incorporating design review or contextual standards into the new zoning code. Form-based codes are a relatively new planning tool, introduced in the 1980s and continuously developed throughout the last twenty-five years. Designed to “regulate development to achieve a specific urban form,” they are used to help protect the form and scale of the public realm and the character of the built environment from inappropriate development.<sup>92</sup> Unlike Euclidean zoning, which generally focuses on the building separate from its context, form-based zoning, such as the model SmartCode, is based on “known patterns of urban design,” like the physical transition from urban to rural.<sup>93</sup>

The practice of separating uses has been changing in planning principles over the last 30 years. It has been recognized as a barrier to urban redevelopment because outdated zoning districts and the absence of mixed-use districts make it difficult to repurpose a site. In the suburbs, zoning permitted development over large areas of land, resulting in loss of farmland, greater auto-dependency, and a loss of community character and traditional community cores. It is commonly criticized as being a main contributor

<sup>90</sup> Ibid, 71.

<sup>91</sup> Ibid, 70.

<sup>92</sup> “Definition of a Form-Based Code.” Form Based Codes Institute. February 17, 2009. <http://www.formbasedcodes.org/definition.html>.

<sup>93</sup> “Smart Code Version 9.2.” SmartCode Central. [http://www.smartcodecentral.org/smartfilesv9\\_2.html](http://www.smartcodecentral.org/smartfilesv9_2.html).

to sprawling development because it focuses on separating incompatible uses rather than encouraging, or even allowing appropriate mixed-use and density. Conventional zoning often failed to protect the character of older neighborhoods because it lacked building form regulation so new development was often out of scale and incompatible with its surroundings.

Form-based codes are not without faults. Most cities agree that form-based codes are appropriate only in certain areas within a city like downtown or historic areas, rather than used for the entire municipality.<sup>94</sup> The consultants list three areas where they are most appropriate for protecting neighborhoods and encouraging reinvestment: transitional areas between residential and non-residential uses, commercial corridors, and transit-oriented development.<sup>95</sup> In their *Detailed Recommendations*, the consultants propose applying dimensional standards to the transition areas between residential and commercial areas in the city. Rather than using specific, form-based regulations discussed above, the consultants propose using contextual regulations, which is a very similar tool. Both create regulations based on existing conditions of the surrounding neighborhood; they take more holistic approaches to regulation by looking beyond individual lot lines. Contextual zoning, however, applies mostly to building form and design without addressing use. The regulations in these transition areas could include lowering building heights or situating parking lots and vehicle access points where

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<sup>94</sup> Clarion Associates and Duncan Associates, *New Philadelphia Zoning Code: Best Practices Report*, Philadelphia: Zoning Code Commission, June 2009, 14.

<sup>95</sup> Ibid, 15.



they would minimize traffic impacts on the neighborhood.<sup>96</sup> In this recommendation, they recognized that “Philadelphia is a multi-dimensional city” and that “development standards will be focused on local character and context and will provide flexibility” so that the needs of the City, neighborhoods, and community will be met.<sup>97</sup>

Another type of zoning that addresses form and use alternatively to Euclidian zoning is performance zoning. Rather than separating uses, performance zoning specifies the intensity of land use based on its impacts on the surrounding area. There are no variances, appeals, or any re-zoning because there is no list of permitted and prohibited uses. More innovative technologies might be accommodated that would otherwise be restricted in traditional zoning. It is also more beneficial to the environment because it evaluates direct impact on natural features. However, one major drawback is that calculating performance standards is complicated and administration has a steep learning curve. Permitted or prohibited uses are not absolute, which can be confusing because similar uses can be regulated differently based on their impact to their surroundings. It has not been widely adopted in the United States.<sup>98</sup> Performance zoning was not analyzed by the consultants as a best practice, nor was it incorporated into the recommendations.

A proposal for design review was submitted by Alan Greenberger, Chair of the ZCC and Executive Director of the PCPC. The proposal “aims to formalize the often

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<sup>96</sup> Portfolio Associates, Inc. *ZCC - Raw Data from Recommendations Survey*. Philadelphia: Zoning Code Commission., 31.

<sup>97</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Interim Report: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 65.

<sup>98</sup> “Performance Zoning.” PlanningWiki. March 4, 2010. [http://www.planningwiki.cyburbia.org/Performance\\_Zoning](http://www.planningwiki.cyburbia.org/Performance_Zoning).

ad hoc design reviews that have taken place for larger and more complex development applications.”<sup>99</sup> A new committee would comprise seven members, appointed by the Mayor, from several professions associated with urban design including architecture, development, historic preservation, and planning. Large projects over 100,000 square feet of gross floor area and/or more than 25 residential units, and smaller projects that exceed dimensional limitations by 200% or more, which also require a variance or zoning change will require design review. All committee meetings will be public; the first meeting will be to gather information and provide the public opportunities to learn about the project and provide feedback. The applicant will have an opportunity to revise the application based on the first meeting and discuss it with the PCPC. A second design review committee meeting will be held to discuss their recommendation to the PCPC. The committee has the ability to call a third review if significant issues remain unresolved. Recommendations to the PCPC will be made available on the PCPC website.<sup>100</sup> The committee’s recommendation would be advisory; failure to incorporate the recommendation would not result in any penalty.<sup>101</sup>

Criteria for reviewing projects will be focused on impact of development on the public realm. Several common urban design principles are incorporated into the criteria for review: street walkability; ground level street activity; appropriate street design and open space function; adequate light and air to the public realm; and contextual design that

<sup>99</sup> Clarion Associates and Duncan Associates, *Philadelphia’s New Zoning Code: Detailed Recommendations*, Philadelphia: Zoning Code Commission, September 2009, 19.

<sup>100</sup> Clarion Associates and Duncan Associates. *Philadelphia’s New Zoning Code: Module 1 - Administration and Procedures*. Philadelphia: Zoning Code Commission, February 2010, 51.

<sup>101</sup> Clarion Associates and Duncan Associates, *Philadelphia’s New Zoning Code: Detailed Recommendations*, Philadelphia: Zoning Code Commission, September 2009., 19.

is consistent with character of the area.<sup>102</sup> Although required design review adds another step to the application process, development standards and community concerns can be identified and resolved before the project has reached a point for approval. Like the pre-application neighborhood meetings, residents have an additional opportunity to learn about and comment on projects that would affect their neighborhood. Addressing these issues early is key to ensuring a smoother review and approval process.

### *Nonconforming Properties*

Another result of an antiquated zoning code with numerous amendments and classifications is the issue of nonconforming properties. A zoning code should reflect and protect the existing physical conditions of the neighborhoods, but when a code is adopted or amended to reflect new perceptions of building setbacks, bulk, and density standards, many previously-conforming properties become nonconforming. Historically, cities tend to write codes that phase out nonconforming uses, rather than accommodate them. Most prohibit outright termination, and instead create regulations and provisions that restrict their expansion.<sup>103</sup> The purpose for a nonconformities provision in Philadelphia's current code reads, "it is the purpose of this section to discourage and eventually eliminate nonconforming uses and structures because they are detrimental to the orderly

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<sup>102</sup> Clarion Associates and Duncan Associates, *Philadelphia's New Zoning Code: Module 1 - Administration and Procedures*, Philadelphia: Zoning Code Commission, February 2010, 61.

<sup>103</sup> Daniel R. Mandelker et al, "Districting and Nonconforming Uses," in *Planning and Control of Land Development: Cases and Materials* (Newark: LexisNexis, 2005), 341.

development of the city.”<sup>104</sup>

Properties that do not conform to the dimensional standards in a given district can be an additional burden to property owners. Currently, the code requires nonconforming property owners to go before the ZBA to seek an area variance, even if the work being done is otherwise as-of-right.<sup>105</sup> This means more time and money must be spent simply because the building or lot, often laid out decades before the zoning ordinance was adopted, does not conform to the updated code. An “alarming percentage” of the nonconforming properties are located in the R10 and R10A districts.<sup>106</sup> Nonconforming lots in the R10A district, for example, account for 90% of the total lots in the district.<sup>107</sup> Properties in this district require a minimum lot width of 16 feet but many of the properties zoned R10 or R10A have lot widths of only 14 or 15 feet.

Nonconforming property regulations can exacerbate the difficulty of building rehabilitation and reuse and neighborhood reinvestment. One provision in the current code states that for up to three consecutive years a discontinued nonconforming use can only be reinstated as the same nonconforming use, nothing else.<sup>108</sup> If a new property owner, for example, wants to use the building for a less-intrusive purpose than what was considered nonconforming before it was discontinued, the zoning code prohibits the new

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<sup>104</sup> The Philadelphia Code § 14-104.

<sup>105</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Interim Report: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 55.

<sup>106</sup> “Zoning Code Commission Meeting Summary, Meeting No. 28,” Philadelphia Zoning Code Commission, January 13, 2010.

<sup>107</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Executive Summary: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 14.

<sup>108</sup> Clarion Associates and Duncan Associates, *Philadelphia’s New Zoning Code: Detailed Recommendations*, Philadelphia: Zoning Code Commission, September 2009, 23.

use, even if it is better suited for the community. Nonconforming vacant lots remain vacant and buildings remain abandoned for years because reusing or rehabilitating them is often “more difficult than new development or demolition.”<sup>109</sup>

In their assessment of the current code, the consultants pointed out that “there are many ill-fitting development standards that make many properties nonconforming; revising these standards would help remove unnecessary regulatory and procedural obstacles to redevelopment.”<sup>110</sup> The consultant team also writes, “given Philadelphia’s great legacies of architecture, history, and neighborhoods, the new regulations should do all they can to accommodate if not encourage rehabilitation and reuse,” and goes on to state that “maintaining existing buildings is often cited as the ultimate green or sustainable development practice.”<sup>111</sup> The new purpose statement in the Nonconformities section of *Module 1* of the new zoning code recognizes the existence of nonconforming properties caused by the adoption or amending of the zoning code and explains that the purpose of the provisions is “to accommodate these nonconformities and to allow for the continued existence, use, modification, and expansion of these uses, buildings, parking areas, lots, signs and site improvements subject to conditions designed to avoid or mitigate negative impacts on the surrounding area.”<sup>112</sup> The new purpose statement gives the City a better understanding of the shift to better accommodate and protect neighborhood characteristics.

<sup>109</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Interim Report: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 53.

<sup>110</sup> Ibid, 53.

<sup>111</sup> Ibid, 53.

<sup>112</sup> Clarion Associates and Duncan Associates, *Philadelphia’s New Zoning Code: Module 1 - Administration and Procedures*, Philadelphia: Zoning Code Commission, February 2010, 72.

The consultants identified several ways the new code can “deregulate” nonconforming properties to eliminate reliance on the ZBA for these minor issues and make it easier for redevelopment. Generally, not all nonconforming properties will require a hearing before the ZBA for a variance. It is a time-consuming and expensive process that puts certain property owners at a disadvantage. The new code will grant authority to L&I to approve minor adjustments that apply to nonconforming lots, uses, buildings, site improvements, or accessory signs, provided the adjustment does not increase the nonconformity. If a property owner has a nonconforming side yard setback, an application to build a roof deck might be approved if it is allowed in the base zoning district because the roof deck does not increase the nonconformity of the side yard setback. If the building is nonconforming because the side yard setback is too small, a permit for an addition would not be granted if it would make the side yard setback even smaller. It is beneficial to residents and the City to have a code that helps homeowners and developers maintain and update existing buildings; it can prevent buildings from going into such disrepair as to cause more serious problems down the road. Mentioned above, contextual zoning regulations can help to address issues where development standards in the base zoning are significantly different from the nonconforming properties.

Not only will minor approvals be allowed at staff level, but the types of permitted adjustments or expansions to nonconforming properties without a ZBA hearing will be increased. For example, a property owner who wishes to construct a vertical addition will be permitted to build up to the allowable height restriction, even if the front or side walls

do not meet the required setback.<sup>113</sup> Nonconforming lots will not contain restrictions that prevent them from being redeveloped or their buildings from being altered, as long as the alterations otherwise comply with the standards of the district. This provision existed in the previous code but is reinforced in the draft by expanding its applicability to properties that might become nonconforming in the future, not just properties that are nonconforming at the time the code is adopted.<sup>114</sup>

### *District Consolidation*

An important issue that adds to the complexity of the current code is the number of unnecessary zoning district classifications. Many of the districts were created only for special development projects, and are applied only to a handful of properties. For example, there are 25 residential classifications and an additional six classifications that have a strong residential and mixed-use purpose. Thirteen of these residential districts individually affect less than 1% of the total residentially zoned land, collectively affecting only 4.16% of the total residentially zoned land. Most of these less-significant classifications were created to accommodate slight differences in setbacks and housing types, which can instead be regulated with contextual requirements.<sup>115</sup> Philadelphia also has ten industrial classifications, several of which are antiquated and no longer applicable

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<sup>113</sup> Clarion Associates and Duncan Associates, *Philadelphia's New Zoning Code: Module 1 - Administration and Procedures*, Philadelphia: Zoning Code Commission, February 2010, 78.

<sup>114</sup> Clarion Associates and Duncan Associates, *Philadelphia's New Zoning Code: Module 1 - Administration and Procedures*, Philadelphia: Zoning Code Commission, February 2010, 79.

<sup>115</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Interim Report: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 11-12.

to the 21<sup>st</sup> century industry. Many of Philadelphia's vernacular residential neighborhoods were built up around industry and manufacturing, but when these industries closed much of the land has remained vacant. The restrictive industrial zoning has prevented most of it from being reused, leaving abandoned lots and buildings scattered throughout residential neighborhoods. Manufacturing is still an important part of the economy, but with approximately 25% of the city's land zoned for industrial use, nearly half of which is vacant, there is clearly room for change.<sup>116</sup>

“The excessive number of special zoning districts in use in Philadelphia is indicative of an overall code that has lost its relevance and effectiveness.”<sup>117</sup> Many special districts were adopted to accomplish very specific goals that often affected only a small handful of land uses. The consultants explained that many of the special districts have similar regulations and can be consolidated to eliminate confusion. Alternatively, some can be removed and city goals accomplished instead through a single master plan. This should not adversely affect the neighborhoods, but rather make regulation more standardized and predictable. This helps facilitate community planning which can protect neighborhood identity.

Modular zoning is one option to classifying the variety of land use, dimensional and development standard combinations found throughout Philadelphia's diverse neighborhoods. Modular zoning breaks the zoning code into three or four “fundamental

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<sup>116</sup> Ibid, 24; and “City of Philadelphia Industrial Market and Land Use Strategy,” Philadelphia Industrial Development Corporation, March 23, 2010 presentation to CPLN620.

<sup>117</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Interim Report: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 26.



building blocks” that address elements such as permitted uses, dimensional standards, and development standards.<sup>118</sup> For example, a building could have a classification of R-3-B, where R indicates use, 3 indicates height, and B indicates a package of design or development requirements. Some proponents praise its flexibility; a property owner or developer can request a zoning change only to one of the modules, leaving, for example, permitted uses the same and changing only allowable height. This differs from the current zoning code, where rezoning could result in the addition or subtraction of permitted uses when only the dimensional or development requirements need to be altered. Other advocates believe modular zoning, with its numerous combinations, can be used to more closely reflect neighborhood character. The expectation is that, because the code was tailored to specifically regulate neighborhood character, the “zoning will probably not change much over time.”<sup>119</sup>

As flexible as the code may be, the seemingly endless combinations of “building blocks” can add to the complexity of the written code. San Diego has 79 base modular zoning districts and 13 overlay districts, Chicago 68 and 11.<sup>120</sup> Philadelphia already has an excess of base and overlay districts and changing to a system that has even more would not alleviate that problem. It would address, however, the many variations in building and lot sizes found throughout the City’s diverse residential neighborhoods.

To address the confusing number of districts, the consultants recommend

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<sup>118</sup> Clarion Associates and Duncan Associates, *New Philadelphia Zoning Code: Best Practices Report*, Philadelphia: Zoning Code Commission, June 2009, 21.

<sup>119</sup> Ibid, 29.

<sup>120</sup> Ibid, 30, 31.

consolidating the current base districts into residential, commercial/mixed use, and industrial/special purpose chapters, and consolidating the numerous special districts into one overlay districts chapter. Elements of contextual zoning will be included in development standards, but overall, the City will keep its standard, Euclidian zoning code that relies on the separation of uses. Modular zoning was suggested, but was not recommended.

They identified several opportunities for consolidating each base district, which would reduce the number of base districts from 55 to 32 and overlay districts from 33 to 11.<sup>121</sup> The official details of these consolidations have not been released with “Module 2” of the new zoning code. Several of the current 32 residential and residentially-oriented districts can be combined based on similar lot sizes and dimensional requirements. Differences can be addressed by using contextual regulations. Those districts which were created to address individual properties will be removed and the issues handled through additional regulations and administrative procedure. Districts which affect no property, or only a small fraction of the city, will be removed.<sup>122</sup>

Reflective of a national trend towards incorporating mixed use development, the city created the residential/commercial, RC, district in 2003, which allows for a mix of residential and commercial development. While this district currently affects only a small fraction of the city, it will be incorporated into the commercial/mixed use district

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<sup>121</sup> Clarion Associates and Duncan Associates, *Philadelphia's New Zoning Code: Detailed Recommendations*, Philadelphia: Zoning Code Commission, September 2009, 25.

<sup>122</sup> Clarion Associates and Duncan Associates, *Philadelphia Zoning Code Update Interim Report: Assessment of Existing Code*, Philadelphia: Zoning Code Commission, April 2009, 26.

to encourage its use in the future. Besides this district, the City currently has nine commercial zoning districts and a dozen special zoning districts that affect these base districts in different parts of the city.<sup>123</sup> The consultants recommended actions similar to those for the residential base district. Districts that serve very similar functions where differences can be addressed with improved development standards would be combined. Those districts that are no longer used would be removed. Additionally, the consultants recommended determining whether any new district should be added to address demands not currently met.<sup>124</sup> The base districts would be renamed to reflect their primary intent: Residential Mixed Use, RMU; Commercial Mixed Use, CMU; and Industrial Mixed Use, IMU, each broken down further to limit the intensity of development.

Consultants proposed using contextual height and setback regulations to address the small differences between districts that will be combined. Simply speaking, this type of zoning “requires new development to ‘fit in’ to the surrounding structures.”<sup>125</sup> For example, if two districts are combined and only one requires front yards, the regulations could require the front façade of new development to fall within one or two feet of the adjacent properties, rather than be specific so as to create nonconforming properties.

These consolidated district types will be very effective in standardizing regulations and making it easier for property owners to understand how their property is affected by the zoning code. The drafts for these chapters have not yet been released

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<sup>123</sup> Clarion Associates and Duncan Associates, *Philadelphia’s New Zoning Code: Detailed Recommendations*, Philadelphia: Zoning Code Commission, September 2009, 32.

<sup>124</sup> Ibid, 33.

<sup>125</sup> Portfolio Associates, Inc., *ZCC - Raw Data from Recommendations Survey*, Philadelphia: Zoning Code Commission, 40.

by the ZCC. In their detailed recommendations, however, the consultants described the proposed purpose for each new base district and summarized the district specific regulations. Many of these details are similar to what currently exists, so most will not be discussed in detail here. It is worth noting, however, that the two RMU districts will be valuable in protecting the low-density, residentially-focused mixed use areas in the city, and in encouraging the redevelopment of abandoned industrial areas located in residential neighborhoods. CMU-1 and CMU-2 will be important in protecting neighborhood-scale retail and commercial corridors.

#### *Additional Tools for Consideration*

Incentive zoning is another type of zoning tool that is popular in several other major cities. It permits larger developments in exchange for public benefits that are not otherwise required, like open space, urban design, transit access, or social services.<sup>126</sup> This option is not emphasized by the consultants, but is worth noting because of its potential for positive preservation activities. An ineffective floor-area ratio (FAR), incentive program currently exists in Philadelphia. There are bonuses for providing the public amenities mentioned above, and also a bonus for transferring development rights from a historic building to new construction. The development rights can only be transferred from specific historic properties deemed threatened by the Philadelphia Historical Commission and located within Center City to specific development sites

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<sup>126</sup> “Types of Zoning Codes.” Zoning Matters. Philadelphia Zoning Code Commission. 2010. <http://www.zoningmatters.org/facts/trends>.

also located within Center City. While FAR bonus programs are good in theory, the Philadelphia program is ineffective “because applicants can simply apply for a height or density variance without having to provide any additional amenities.”<sup>127</sup> Limiting use and dimensional variances would strengthen FAR incentives and provide the city with public benefits it would not otherwise get with variances.

## CONCLUSION

Philadelphia is often referred to as a city of neighborhoods. The consultants, ZCC committee members, other city officials and residents alike believe this is an important element to protect with the new zoning code; it is reflected in both the ZCC’s goals and the public’s priorities for changes they’d like to see in the new code. Identified early as a priority, the affect zoning will have on neighborhoods is a common thread throughout the code assessment, recommendations, public feedback and new draft of the zoning code. In a presentation to the ZCC, John Gallery, Executive Director of the Preservation Alliance, reinforced the importance of protecting neighborhood character through zoning: “If Philadelphia’s historic resources and character are its most important asset, the primary purpose of the zoning code are: 1. To preserve the existing historic character of the city; [and] 2. To ensure that new development is compatible in character, size, and scale with its historic context.”<sup>128</sup> The recommendations discussed in this chapter, and

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<sup>127</sup> Portfolio Associates, Inc., *ZCC - Raw Data from Recommendations Survey*, Philadelphia: Zoning Code Commission, 14.

<sup>128</sup> Gallery, John. “Zoning and Historic Preservation.” Presentation to Zoning Code Commission, 2008, slides 14-15.

summarized in the conclusion, if adopted, will have a significant, positive effect on the defining characteristics of the city.

## **CHAPTER 3 – Neighborhood Conservation Districts**

### **INTRODUCTION**

Neighborhood conservation districts are an increasingly popular tool for protecting the character of historic residential neighborhoods. They serve several purposes and vary widely throughout the United States; thus, many definitions exist. Defined by Julia Miller, author of a National Trust publication on conservation district programs, “Neighborhood conservation districts are areas located in residential neighborhoods with a distinct physical character that have preservation or conservation as the primary goal.”<sup>129</sup> Robert Stipe, design professor at North Carolina State University, has a broader view. He uses the term conservation area, and defines it as an area that “possesses form, character, and visual qualities derived from arrangements or combinations of topography, vegetation, space, scenic vistas, architecture, appurtenant features, or places of natural or cultural significance, that create an image of stability, comfort, local identity, and livable atmosphere.”<sup>130</sup> Carole Zellie, Principal at Landscape Research in St. Paul, Minnesota, studied conservation district ordinances in twenty municipalities across the country and offers a definition that reads, “Conservation districts offer a means to recognize the special historic and/or neighborhood character, and provide planning assistance and improvement without passing through the often arduous process of historic designation and design review.”<sup>131</sup> Finally, Marya Morris, author of an American Planning Association report titled, “Innovative Tools for Historic

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<sup>129</sup> Julia Miller, *Protecting Older Neighborhoods Through Conservation District Programs*, (Washington, D.C.: National Trust for Historic Preservation, 2004), 1.

<sup>130</sup> Robert E. Stipe, “Conservation Areas: A New Approach to an Old Problem,” in “Conservation Districts,” *Cultural Resources Partnership Notes*, Issues Paper, June 1998 (Heritage Preservation Services, National Park Service), 3.

<sup>131</sup> Carole Zellie, “A Consideration of Conservation District and Preservation Planning: Notes from St. Paul, Minnesota,” in “Conservation Districts,” *Cultural Resources Partnership Notes*, Issues Paper, June 1998 (Heritage Preservation Services, National Park Service), 8.

Preservation,” concisely defines conservation districts as “areas, usually residential neighborhoods, with certain identifiable attributes, embodied in architecture, urban design, and history, that are subject to special zoning or land-use regulations.”<sup>132</sup> While each definition has a slightly different scope, it is clear that conservation districts are tools to protect the significant characteristics of a defined area. These definitions provide a glimpse into the variety of conservation district programs that can be found throughout the U.S.

Generally speaking, the primary purpose of a conservation district is to provide protection to a large swath of buildings and overall neighborhood character. They typically take the form of a zoning overlay district and provide standards and regulations for protecting the defining characteristics of a particular neighborhood. A neighborhood conservation district tends to have looser regulations, allowing for more flexibility while providing additional protection to the neighborhood’s built environment.

They are used in a variety of instances: significant neighborhoods that do not qualify for local historic district designation; neighborhoods that would otherwise qualify for historic district designation but have lost integrity due to demolition or incompatible alterations; neighborhoods where there is insufficient support for historic district designation but clear desire to halt demolition and incompatible development; or neighborhoods with residents that fear displacement and want to protect affordable housing.<sup>133</sup> One of the main components of a conservation district program is public

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<sup>132</sup> Morris, Marya. “Innovative Tools for Historic Preservation.” *Planning Advisory Service Report* (American Planning Association), no. 438 (1992), 13.

<sup>133</sup> Julia Miller, *Protecting Older Neighborhoods Through Conservation District Programs*,



participation, used to determine specific goals and objectives for the neighborhood.

Each conservation district and ordinance is customized for the neighborhood in order to accomplish these goals. This aspect is very different from historic district programs, where each historic district is typically regulated through the similar ordinances and uniform rules and regulations. Usually, historic district programs are implemented solely for historic preservation purposes and rely exclusively on design review.<sup>134</sup> Conversely, many conservation district programs also include development controls, such as setback requirements, use regulation, and lot coverage – issues traditionally reserved for zoning and neighborhood planning.<sup>135</sup> Historic districts offer a stricter set of rules and regulations, while conservation districts typically allow for more lenient standards that allow for a variety of maintenance techniques. Both historic and conservation districts have the ability to increase a neighborhood's visibility within a city, which can be beneficial when a struggling neighborhood needs governmental assistance and services and is seeking new investment.<sup>136</sup> Conservation districts, however, focus on preserving the streetscape and retaining neighborhood character by primarily regulating new construction, whereas local historic districts protect the neighborhood by preserving modifications to individual buildings.<sup>137</sup>

While each conservation district is different, they generally embody either a historic preservation model or a neighborhood planning model, depending on the goals (Washington, D.C.: National Trust for Historic Preservation, 2004), 5.

<sup>134</sup> Ibid, 1.

<sup>135</sup> Ibid, 3.

<sup>136</sup> Ibid, 5.

<sup>137</sup> John Milner Associates and The Preservation Coalition of Greater Philadelphia. "The Philadelphia Conservatin District, Volume 1." Philadelphia, 1992, 1 – 4.

and the regulatory tools.<sup>138</sup> Both have a strong focus on preserving neighborhood character, but, as described below, different goals are accomplished using a combination of design and land use controls. There are exceptions to these two models and an increasing number of cities are taking a hybrid approach in order to address specific community concerns. Purpose, designation criteria, regulations, and standards will differ for each program. A brief outline of different conservation district programs found throughout the United States, compiled by Julia Miller, author of *Protecting Older Neighborhoods Through Conservation District Programs*, is included in Appendix F.

The historic preservation or architectural model is for neighborhoods with “a high concentration of older structures that share a cohesive quality” and where preserving the physical attributes is the primary goal.<sup>139</sup> This model is typically used when the city has a historic district program in place, but the neighborhoods in question do not qualify for historic district designation because of a loss of architectural integrity or because the level of architectural significance is not enough for historic district protection. In other situations, this type of district is appropriate when residents oppose the stricter regulations that come with a local historic district program. In other words, this model is like a “historic district lite.” Because of the concern over the physical characteristics of the buildings, this model relies on design review to control major changes. A historic preservation commission or specially-appointed neighborhood commission reviews

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<sup>138</sup> Ibid, 2; Morris, Marya. “Innovative Tools for Historic Preservation.” *Planning Advisory Service Report* (American Planning Association), no. 438 (1992), 17.

<sup>139</sup> Julia Miller, *Protecting Older Neighborhoods Through Conservation District Programs*, (Washington, D.C.: National Trust for Historic Preservation, 2004), 2.

alterations, additions, new construction, and demolition using standards that emphasize compatible development.

A successful example of the historic preservation model is in Nashville, Tennessee. The program was developed in the mid 1980s to respond to development threats experienced by the Lockeland Springs neighborhood, a low- and moderate-income area of East Nashville. Pressure from the high-income historic neighborhoods to the west and north resulted in a teardown trend. The unique bungalow style in the neighborhood was compromised by incompatible development. Understanding the need to protect the remaining historic homes but fearful that the Historic Preservation District would not be supported by the community, the Metropolitan Historical Zoning Commission, MHZC, who also administers the Historic Preservation Districts, Historic Landmark Districts, and Historic Bed and Breakfast Homestay Districts, created the Neighborhood Conservation District program to offer residents an alternative for protecting their historic neighborhood.<sup>140</sup> It is very clear in the Historic Overlay District legislation that the purpose of the districts is “to insure the ongoing preservation of structures of historic value,” to the area.<sup>141</sup> The criteria for designating a neighborhood as a conservation district are the same as for a local historic district, the difference lies in the standards for review.<sup>142</sup> The MHZC reviews demolition, new construction including additions, and

<sup>140</sup> “The Code of the Metropolitan Government of Nashville and Davidson County, Tennessee” Section 17.36.110 Article III; Julia Miller, *Protecting Older Neighborhoods Through Conservation District Programs*, (Washington, D.C.: National Trust for Historic Preservation, 2004), 2-3.

<sup>141</sup> “The Code of the Metropolitan Government of Nashville and Davidson County, Tennessee” Section 17.36.100 Article III.

<sup>142</sup> Julia Miller, *Protecting Older Neighborhoods Through Conservation District Programs*, (Washington, D.C.: National Trust for Historic Preservation, 2004), 2-3.

relocation; it does not review exterior renovations, rehabilitations and restorations, as it does in the other three historic overlay districts.<sup>143</sup> Using design guidelines for height, scale, setback and rhythm of building spacing, and the relationship of materials, textures, details, and material color, the standards for new construction in the Historic Overlay Districts place a significant amount of emphasis on contextualism but are careful to avoid imitation.<sup>144</sup> The design guidelines are created in collaboration with the neighbors who reside in the proposed District.

In Cambridge, Massachusetts, the Cambridge Historical Commission administers a historic district and a conservation district program. Different from the Nashville program, there is a distinction between the criteria for historic and conservation district designations in Cambridge. Historic districts are meant to be used for the city's best historic and architectural resources, "while neighborhood conservation districts are used to preserve places and structures that together 'constitute a distinctive neighborhood or ... have a distinctive character in terms of ... exterior features.'"<sup>145</sup> Property owners in both historic and conservation districts must acquire a certificate of appropriateness for construction, demolition, and alterations to exterior features. Design guidelines for each conservation district differ, based on the particular characteristics of the neighborhood, and are typically more lenient than those for historic districts. The guidelines might specifically address building scale, fence heights, and streetscapes and views.

<sup>143</sup> "MHZC Districts and Design Guidelines." *Historical Commission*. 2010. <http://www.nashville.gov/mhc/mhzc/districts.asp>, 7 Mar 2010; "The Code of the Metropolitan Government of Nashville and Davidson County, Tennessee" Section 17.36.110 Article III.

<sup>144</sup> Morris, Marya. "Innovative Tools for Historic Preservation." *Planning Advisory Service Report* (American Planning Association), no. 438 (1992), 22.

<sup>145</sup> *Ibid*, 3.

Because the decision of whether a neighborhood is qualified to be a historic district or conservation district can be difficult or subjective, the level of neighborhood support ultimately plays a large role.

The other, common conservation district model is the neighborhood planning model. While preserving neighborhood character remains a primary focus, the planning model is often a component of a broader neighborhood plan rather than a stand-alone preservation tool. The plan is developed and adopted by residents and includes restrictions that are agreed upon by a majority of the residents. With a planning focus, this “neighborhood-level, land-use tool” can provide communities with a mechanism to “preserve neighborhood character, retain affordable housing, and protect an area from the potentially harmful or expulsive effects of more intensive or inappropriate development.”<sup>146</sup> Development and implementation rely heavily on public participation and support, and proposals for change are reviewed by a planning, zoning, or specially-appointed neighborhood commission.<sup>147</sup> Planning and zoning tools such as lot coverage, setback requirements, and permitted uses, as well as design review, are used to manage change.<sup>148</sup> Demolition, new construction, and additions are usually regulated; alterations are typically regulated to a more lenient standard, if at all.

Phoenix, Arizona has a Special Planning District ordinance that is designed so neighborhoods can customize the zoning regulations to address the particular

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<sup>146</sup> Morris, Marya, “Innovative Tools for Historic Preservation,” *Planning Advisory Service Report* (American Planning Association), no. 438 (1992), 4.

<sup>147</sup> Ibid, 4.

<sup>148</sup> Ibid, 3.

needs identified by its residents and to “implement programs for the conservation and revitalization of neighborhoods.”<sup>149</sup> It was developed during the early 1970s to help older neighborhoods “maintain their original vitality” during a time of rapid change.<sup>150</sup> A neighborhood plan, developed by community groups and the city planning department, is adopted as an overlay district to “facilitate maintenance and upgrading of the neighborhood; to encourage development of vacant and underused lots; to lessen the adverse effects of incompatible mixtures of uses; and to encourage property owners and residents to improve the neighborhood.”<sup>151</sup> The neighborhood plan includes both building design guidelines as well as site planning elements such as setbacks and landscaping. Phoenix also uses downzoning, which reduces allowable density to protect incompatible infill. Because this example has an intense planning component rather than a preservation focus, it is possible for a conservation district in Phoenix to also be a historic district; four of the nine special planning districts in Phoenix are also historic districts, although the boundaries do not match exactly.<sup>152</sup> This coexistence provides neighborhoods with a tool for managing revitalization while also explicitly protecting the neighborhood’s historical and architectural integrity.

Another example of the neighborhood planning approach is seen in Raleigh,

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<sup>149</sup> Janine Hatmaker, Gary King, Annie Alvarado, Nick Bridge, and Sally Heinrich, *The Special Planning District Handbook*. Phoenix: City of Phoenix Planning Department, June 1988, 3.  
<sup>150</sup> Ibid, 3.

<sup>151</sup> Morris, Marya, “Innovative Tools for Historic Preservation,” *Planning Advisory Service Report* (American Planning Association), no. 438 (1992), 19, taken from Janine Hatmaker, Gary King, Annie Alvarado, Nick Bridge, and Sally Heinrich, *The Special Planning District Handbook*. Phoenix: City of Phoenix Planning Department, June 1988, 15.

<sup>152</sup> Morris, Marya, “Innovative Tools for Historic Preservation,” *Planning Advisory Service Report* (American Planning Association), no. 438 (1992), 19

North Carolina, where a teardown trend has resulted in out-of-scale single-family homes or townhouses.<sup>153</sup> Many of the city's neighborhoods, both historic and not, choose to go through a neighborhood planning process in order to manage change and ensure new construction is compatible with neighborhood characteristics. Development controls, including setback, building height and orientation, lot size and street frontage, are set forth in the neighborhood plan. Neighborhoods intending to create a Neighborhood Conservation Overlay District, NCOD, must have developed at least twenty-five years prior, be at least 75% developed, and possess a "a unifying, distinctive character."<sup>154</sup> Additionally, they must have gone, or be going through a neighborhood planning process in order to be considered for a NCOD. Those seeking a NCOD are also encouraged, though not required, to include architectural design regulations especially where strong historic character is still present.<sup>155</sup> Both the neighborhood planning and the NCOD processes are administered by Raleigh's Planning Department.

Increasingly common is a hybrid model that merges aspects from both the preservation and planning models into a single approach that addresses the needs of the individual neighborhood. The new model, which incorporates design and land-use regulations, places emphasis on community involvement and support to develop designation criteria, design and development guidelines, and in some cities, a

<sup>153</sup> Julia Miller, *Protecting Older Neighborhoods Through Conservation District Programs*, (Washington, D.C.: National Trust for Historic Preservation, 2004), 11.

<sup>154</sup> "Neighborhood Planning Process." *Raleigh, North Carolina, USA*. [http://www.raleighnc.gov/portal/server.pt/gateway/PTARGS\\_0\\_2\\_306\\_202\\_0\\_43/http://pt03/DIG\\_Web\\_Content/category/Resident/Neighborhoods/Neighborhood\\_Plans/Cat-1C-20041206-102350-Neighborhood\\_Planning\\_Pr.html](http://www.raleighnc.gov/portal/server.pt/gateway/PTARGS_0_2_306_202_0_43/http://pt03/DIG_Web_Content/category/Resident/Neighborhoods/Neighborhood_Plans/Cat-1C-20041206-102350-Neighborhood_Planning_Pr.html).

<sup>155</sup> Julia Miller, *Protecting Older Neighborhoods Through Conservation District Programs*. Washington D.C.: National Trust for Historic Preservation, 2004, 11.

neighborhood review board.

Dallas, Texas has a Conservation District Ordinance that allows neighborhoods to use tools from both the historic preservation and neighborhood planning models. Taking a comprehensive approach to protecting its older neighborhoods, the enabling ordinance requires that a designation ordinance address design and development regulations, including permitted uses, building bulk, density, setbacks, parking, environmental performance, signs, landscaping, nonconforming uses and structures, and any other regulations necessary to protect the character of the neighborhood. Some neighborhoods have added a design review component, in addition to the regulations, to “ensure that new construction is compatible with the neighborhood’s existing architecture.”<sup>156</sup> The individual conservation districts are tailored to each neighborhood and the program is administered by planning department staff.

A similar model exists in Davis, California. A series of urban design workshops in 2000 resulted in the adoption of the Downtown and Traditional Residential Neighborhood Overlay Districts, DTRN, and Design Guidelines, aimed at regulating development in three residential neighborhoods that surround the downtown core.<sup>157</sup> The purpose of the DTRN overlay districts includes common historic preservation and neighborhood planning elements: “conserve the traditional neighborhood character, fabric and setting while guiding future development, reuse, and reinvestment;” “plan for new commercial and residential infill construction that is compatible and

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<sup>156</sup> Julia Miller, *Protecting Older Neighborhoods Through Conservation District Programs*. Washington D.C.: National Trust for Historic Preservation, 2004, 12.

<sup>157</sup> Ibid, 14.



complementary to the character of existing neighborhoods areas within the districts;” and “provide guidelines to clarify the community’s expectations for the type and quality of development within the district.”<sup>158</sup> The adopted design guidelines apply to site design, primary building scale and form, and secondary structures; specific elements include streetscape, building location, building materials, mass and scale, and additions.<sup>159</sup> Any property owners doing work in the city’s three DTRN overlay districts must seek approval from the Planning and Building Department or Planning Commission.

## NEIGHBORHOOD CONSERVATION IN PHILADELPHIA

Philadelphia has two specific tools for protecting historic neighborhoods: Neighborhood Conservation Districts (NCDs), and historic districts; the more stringent being the local historic district. To understand the strengths and weaknesses of Philadelphia’s NCDs, it helps to also understand the advantages and disadvantages of its historic districts.

Historic districts were authorized by a 1986 amendment to the 1955 Philadelphia Historic Preservation Ordinance. They are created and administered by the Philadelphia Historical Commission (PHC), which regulates all buildings, structures, sites, objects, districts, and interiors on the Philadelphia Register of Historic Places. The PHC, which operates separately from the Philadelphia City Planning Commission, has defined a

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<sup>158</sup> Davis, California Municipal Code 40.13A.010.

<sup>159</sup> “Part 3: Davis Downtown and Traditional Residential Neighborhood Design Guidelines,” Davis, California, <http://cityofdavis.org/cdd/design/pdfs/final-part3-complete.pdf>, 81.

district as:

A geographically definable area possessing a significant concentration, linkage, or continuity of buildings, structures, sites or objects united by past events, plan or physical development. A district may comprise an individual site or individual elements separated geographically but linked by association, plan, design or history.<sup>160</sup>

A proposed historic district must possess a unifying characteristic under one or more criteria outlined in the Historic Preservation Ordinance. The chosen criteria will guide the statement of significance and help to determine whether or not buildings are contributing. A district should be related to the development of Philadelphia, Pennsylvania, or the United States; be associated with an event of importance; be of a distinctive architectural style; be the work of a significant designer, architect, or engineer; be related to a square, park, or distinctive area; have an established visual feature; yield information in prehistory; or “exemplify the cultural, political, economic, social, or historical heritage of the community.”<sup>161</sup> A proposed district is surveyed and all buildings are categorized as significant, contributing, or non-contributing according to the criteria chosen to signify the district. Significant places are those that would qualify as individual landmarks on the Philadelphia Register of Historic Places; contributing places are not eligible for individual listing but reflect the significance of the district as identified in the district’s statement of significance; and non-contributing places do not reflect the significance of the district.<sup>162</sup> Because a historic district must identify a specific period of significance based on the above mentioned criteria, some buildings may be considered

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<sup>160</sup> *Philadelphia Historical Commission Rules & Regulations*. Philadelphia Historical Commission, 2005, Section 2.9.

<sup>161</sup> “Bill No. 318: Historic Preservation Ordinance,” Section 14-2007(5)(a-j).

<sup>162</sup> *Philadelphia Historical Commission Rules & Regulations*. Philadelphia Historical Commission, 2005, Section 5.3.c.

non-contributing, even though they are part of the historic fabric of the neighborhood.

A permit must first be obtained from the PHC before building new, or altering or demolishing any building or in the historic district, regardless of the building's classification.<sup>163</sup> Demolition of significant and contributing buildings is prohibited unless the PHC finds doing so is necessary in the public interest or if it cannot be used or adapted for any other purpose other than what it is.<sup>164</sup> The PHC also reviews the appropriateness of any new construction, alterations, and demolition within the district. Building permits are reviewed using the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings, and by considering:

- the historical, architectural, or aesthetic significance of the buildings, structure, site or object;
- the effect of the proposed work on the building, structure, site or object and its appurtenances;
- the compatibility of the proposed work with the character of the historic district or with
- the character of its site, including the effect of the proposed work on the neighboring structures, the surroundings and the streetscape;
- the design of the proposed work.<sup>165</sup>

Design regulations are not specific to each historic district, but are interpreted by the PHC based on the above criteria and the statement of significance adopted by the PHC.

Several of the historic districts have special overlays, which add restrictions that are not provided in the base zoning classifications or specified in the Historic Preservation Ordinance. For example, Old City, one of Philadelphia's more well-known historic

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<sup>163</sup> "Bill No. 318: Historic Preservation Ordinance," Section 14-2007(7)(a).

<sup>164</sup> "Bill No. 318: Historic Preservation Ordinance," Section 14-2007(7)(j).

<sup>165</sup> "Bill No. 318: Historic Preservation Ordinance," Section 14-2007(7)(k)(.2-.6).

districts, falls under the Old City Residential Area Special District, which prohibits specific uses and regulates building height and width.<sup>166</sup> Not all special districts are associated with historic districts, nor do all historic districts also have a special district in the zoning code.

In addition to flexible design guidelines, the PHC has the power to deny demolition permits. Only two scenarios are available to an applicant to legally demolish an individual historic landmark or a contributing building in a historic district: economic hardship and public interest. An applicant must prove the building cannot be feasibly adapted, sold, or reused in any other way in order to claim economic hardship. Alternatively, the applicant must prove that demolishing the building will serve a greater public benefit. The latter criteria is extremely difficult to meet, and has been used in only a limited number of cases, such as the new Convention Center, where the economic benefit to the city as a whole outweighed the case for preserving the buildings that once stood in its place. However, once an applicant is approved for a demolition permit, the PHC does not have the power to enforce specific design guidelines for new construction. It is given an opportunity to review and provide comments, but lacks regulatory jurisdiction.

The other tool for protecting historic neighborhoods in Philadelphia is the Neighborhood Conservation District. In June 2004, the Philadelphia City Council passed legislation authorizing the creation of NCDs. Authors and supporters of the bill strongly believed in the importance of Philadelphia's distinctive neighborhoods, writing that the

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<sup>166</sup> Philadelphia Zoning Code, Section 14-1601

consistency in the characteristics of such places “over the years created a neighborhood environment and streetscape that brought neighbors together.”<sup>167</sup> City Council recognized that many of these neighborhoods experience economic and social pressures which threaten their identity, and protecting them would be in the best interest of the City. The Constitution of the Commonwealth of Pennsylvania provides the City with the legal basis to create historic districts and NCDs: it upholds the rights of the people of Philadelphia, “to protect their neighborhoods and to preserve the unique contributions of Philadelphia’s neighborhoods for all of Philadelphia and its residents.”<sup>168</sup>

The NCD legislation clearly expresses the intentions and purposes for the program. One goal reads, “The public welfare of the City will be promoted by encouraging conservation and preservation through revitalization of these distinctive residential neighborhoods in order to preserve their unique environments.”<sup>169</sup> In addition to protecting characteristics, NCDs are intended to foster pride and promote revitalization by “maximizing the economic, social, and educational value of neighborhood transformation.”<sup>170</sup> Used in tandem with other initiatives by PCPC and PHC, NCDs are intended to be another tool for practitioners to protect Philadelphia’s vernacular neighborhoods.

Like any overlay district, the authors established several parameters concerning the designation of a NCD. To avoid overlapping regulations, they are not permitted

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<sup>167</sup> Philadelphia Zoning Code, Section 14-1201(3).

<sup>168</sup> Philadelphia Zoning Code, Section 14-1201(5).

<sup>169</sup> Philadelphia Zoning Code, Section 14-1201(6).

<sup>170</sup> Philadelphia Zoning Code, Section 14-1201(10).

in areas that are already designated, or proposed to be designated, as a local historic district.<sup>171</sup> As explained above, the primary purpose of the NCD is its focus on protecting residential neighborhoods, so a NCD in Philadelphia must consist of at least 70% residential use with residential zoning and no more than 20% of its area may consist of vacant lots or vacant buildings.<sup>172</sup> Before the designation process, a nomination for a NCD must first be approved by City Council, to ensure that the proposed NCD “possess a consistent physical character as a result of concentration of residential buildings of similar character or a continuity established by an overall plan.”<sup>173</sup>

If these qualifications are met, the designation process begins with a petition to the PCPC to initiate the process. Petitions must come from residents within the proposed NCD. They can be submitted either by a neighborhood association or by submitting the signatures of at least 30% of all property owners and at least 30% of all owners of owner-occupied housing units. As the code stands today, the PCPC must then draft the ordinance that would establish the particular NCD. It is required that the PCPC work with the residents and Councilpersons of the proposed NCD to draft the ordinance with customized design guidelines and hold at least one public meeting within the proposed boundaries to seek feedback. Although each set of design guidelines is different depending on the neighborhood characteristics which they are intended to protect, each must address:

- Alterations to architectural features of existing buildings that are visible from a public street;

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<sup>171</sup> Philadelphia Zoning Code, Section 14-1203(2).

<sup>172</sup> Philadelphia Zoning Code, Section 14-1203(3).

<sup>173</sup> Philadelphia Zoning Code, Section 14-1203(4).

- The new construction and expansion of a building;
- Construction of a new building or use of a vacant property after substantial demolition of an existing building on a property.<sup>174</sup>

The draft is then given to the District Councilpersons representing the NCD who must officially introduce the NCD to City Council. Recommendations on the proposed ordinance are sought from the PCPC and the PHC, and a public hearing is held within the proposed NCD to give the public an opportunity to review the proposal. However, if over 51% of all property owners or owners of owner-occupied housing units submit a statement of opposition by the date of the public hearing, City Council cannot enact the ordinance. City Council also has the power to revise the proposed ordinance and make the proposed district boundaries smaller. Presuming there is a majority in favor of the proposed NCD, City Council can enact the ordinance. All property owners and neighborhood organizations within the NCD are then notified in writing of the new ordinance and the regulations that come with it.<sup>175</sup>

With specific guidelines, the NCD legislation gives the City the ability to regulate the design of exterior alterations, additions, and new construction in the NCD. Property owners seeking a building permit must acquire a Certificate of Compliance. Issued by staff at the PCPC, these certificates are required in addition to the basic permits and approvals required by the zoning code. Applications are reviewed by staff at the PCPC, with respect to the design guidelines in the NCD ordinance. Approvals and denials may be appealed to the Board of License and Inspection Review, who have the authority to

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<sup>174</sup> Philadelphia Zoning Code, Section 14-1204(1).

<sup>175</sup> Philadelphia Zoning Code, Section 14-1203(5) through Section 14-1203(11).

overrule the design guidelines “if, because of special conditions, a literal enforcement of the provisions of [Section 14-1206] would result in unnecessary hardship.”<sup>176</sup>

Applications for a demolition permit in an NCD must also be reviewed by the PCPC.

The demolition application must include plans for the property’s use after demolition, but the PCPC does not have the authority to deny the application if it meets the guidelines in the ordinance.

In *Module 1* of the new code, the responsibility for drafting the individual NCD ordinances has shifted from the PCPC to the neighborhood organization from which the petition came. The new provision requires neighborhood organizations to submit a draft district boundary map and draft design guidelines with their petition to the PCPC. Presumably, the neighborhood will have some guidance from the PCPC, but this proposal is discouraging. Neighborhood organizations most likely lack the sophistication to write the specific language required for an ordinance. Because the regulations are written into the ordinance, they must be extremely specific and without discretion. Removing the responsibility from the PCPC will likely make it more cumbersome for neighborhoods to take advantage of the program. After the petition and draft guidelines are submitted, the PCPC has six months to review the petition and hold a community meeting for public feedback, located in the neighborhood seeking NCD designation. The PCPC then submits their recommendation to the City Council. The revised provisions also remove the PHC from reviewing the ordinance during the application process. PCPC submits the application to City Council, who reviews the proposal and makes its decision, given

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<sup>176</sup> Philadelphia Zoning Code, Section 14-1206(4)



at least 50% of the residential property owners do not object. Analysis of these proposed changes will not be included in the critique because further analysis reveals that a more thorough restructuring is more beneficial. Recommendations for changes will be discussed in the Conclusion of this thesis.

There are advantages and disadvantages to Philadelphia's historic districts and NCDs. Like most preservation programs, Philadelphia's historic districts have the advantage of possessing stricter regulations compared to a NCD. Neither the Philadelphia Historic Preservation Ordinance nor the PHC Rules and Regulations explicitly outline development standards or design guidelines, leaving the reasoning for issuing or denying permits to the PHC and Architectural Review Board for case-by-case analyses. This flexibility allows the PHC to look at each building in each historic district differently and determine the appropriate course of action based on the building and its context. In a NCD, the design guidelines are written into the ordinance and must therefore be less subject to interpretation. A resident who submits an application that complies with the NCD ordinance cannot be denied a permit, even if the PCPC believes the building is still out of context. The flexibility and lack of explicit design guidelines helps the PHC to treat each historic district and building appropriately. Project review in a NCD is technical, administered by PCPC staff; review of local historic districts and landmarks is aesthetic, more subjective and often more political because of the nature of the legislature and the composition of the appointees in the PHC.

A major benefit is that the City finally has the legal framework for an alternative

tool to protect neighborhood character. With specific design guidelines, the NCD allows communities to target specific issues that threaten the character of the neighborhood. Whether the issue is front-façade garages and curb cuts, out-of-context building size or style, or inappropriate building materials, neighborhoods have a platform from which they can regulate the visual quality of their public space.

With more lenient development regulations and design guidelines than the historic district, residents in lower-income residential neighborhoods are more likely to support NCD designation. Maintaining a home in a historic district is costly and standards for maintenance and alterations are stricter than in a conservation district. In a NCD, alterations and additions are allowed if their design complies with the guidelines; the PCPC cannot deny a certificate on the basis of loss of historical integrity. In a historic district, a façade publicly visible from the street must maintain its historical integrity; alterations are denied or carefully regulated.

Four years after the enabling legislation was passed, Philadelphia created its first NCD for the Queen Village neighborhood. Located just south of Center City along the Delaware River, Queen Village is typical of a historic residential neighborhood that, because of its age and important waterfront location, has undergone several transformations since it was first settled in the 17<sup>th</sup> century. It is significant as one of the first developed neighborhoods in Philadelphia and contains many individual historic landmarks, but lacks a single architectural typology often sought for a local historic district. The residential neighborhood features a “diverse and eclectic architectural

style” that offers a snapshot of the history and evolution of Philadelphia’s residential neighborhoods.<sup>177</sup> More relevant, however, is that the Queen Village NCD is example where significant reservations about a local historic districts shifted focus from pursuing a historic district designation to a NCD designation.<sup>178</sup>

In Queen Village, preservation had a top priority. Residents were most concerned with teardown and incompatible construction, and worried less about revitalization or neighborhood planning. They had a thriving community in a desirable location, supported by a strong neighborhood association; revitalization was not an issue. The purpose and intent of the NCD, as outlined in the ordinance, coincided well with the goals of the Queen Village residents. They could design specific guidelines that addressed major issues, while avoiding some of the stricter regulations found in a historic district.

Feeling threatened by development pressures and incompatible alterations, the Queen Village Neighbors Association, QVNA, filed a petition for a Neighborhood Conservation District.<sup>179</sup> The ordinance, which took several years to develop, was passed by City Council on June 19, 2008, and signed by the Mayor a month later. Included are a description of the NCD boundary and a set of area requirements and design guidelines for residential, commercial, and industrial structures. Because the ordinances are customized for the neighborhood, the Queen Village NCD ordinance reflects the major development

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<sup>177</sup> Steve Sitarski, “Queen Village: A Brief History.” *Queen Village Neighborhood Association*. <http://www.qvna.org/qv/history.htm>.

<sup>178</sup> Michael Hauptman, email correspondence

<sup>179</sup> Spina, Laura, community planner at Philadelphia City Planning Commission, interview by Lindsey Allen. (October 28, 2009).

issues felt by the neighborhood's residents. Incompatible development spurred the NCD designation and residents were particularly alarmed with the number of front garages and curb cuts permitted in new construction and alterations. In an attempt to protect the safety of pedestrians, limit curb cuts, and preserve the character of the streetscape, the ordinance created design guidelines for residential facades. Residential buildings must have a habitable room at the front of the first floor and a building must be wide enough for both a first-floor front room and a garage in order for the curb cut to be permitted. Building setback is regulated, as well as the placement of windows, doors, and roof decks. Finally, there is also a list of allowable and prohibited building materials.

## ANALYSIS/CRITIQUE

The Philadelphia NCD program has strengths and weaknesses. Many of the weaknesses stem from a basic disconnection between the NCD's intended goals and how it is administered. The Philadelphia NCD program is premised on preservation goals but is instead monitored by the PCPC. There are a few reasons why the PCPC was chosen to administer the program rather than the PHC. One is that City Council did not know to whom else the program should be given; the PCPC had available staff to review permit applications.<sup>180</sup> According to Laura Spina, community planner at the PCPC, politics also played a large role in excluding PHC from the running. She explained that the processes

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<sup>180</sup> Kelly B. Bissinger, *Conservation Districts: A Solution for the Deanwood Neighborhood*. Georgetown Law Historic Preservation Papers Series, Washington D.C.: Georgetown University Law Center, 2007, 15.

for permit application review at PHC are comparatively stringent, and supporters of the NCD program wanted an expeditious process. Additionally, supporters of the PHC feared that if the door opened for changes to the Historic Preservation Ordinance, long-time dissenters would have an opportunity to make undesirable changes to the ordinance.<sup>181</sup>

Much of the language in the enabling legislation implies that the program is intended to be used for historic preservation purposes. In the first paragraph of the *Rules and Regulations for Neighborhood Conservation Districts*, it reads, “City Council recognized that many areas, while they may not meet the strict requirements of an historic district as set by the city’s guidelines, retain enough integrity and interest to warrant protection.”<sup>182</sup> Nowhere in this introduction is neighborhood planning or revitalization mentioned. It uses some planning tools such as setback and height regulations, but relies more heavily on design guidelines, which are more universally used in historic preservation models. It lacks a neighborhood planning component typically found when a planning and zoning commission is the regulatory agency. As explained by Julia Miller, historic preservation models are best regulated under a historic preservation commission or special neighborhood commission. Conversely, a neighborhood planning model is typically regulated by a city’s planning and zoning commission or a special neighborhood commission. A mixture of tools is commonly found in a hybrid conservation district program, but unfortunately, the Philadelphia NCD program does not seem to function as

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<sup>181</sup> Spina, Laura, community planner at Philadelphia City Planning Commission, interview by Lindsey Allen. (March 16, 2010).

<sup>182</sup> *Neighborhood Conservation District Rules and Regulations*. Philadelphia City Planning Commission, 2007, 1.

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Interestingly, the issue of an administrative agency was discussed in *The Philadelphia Neighborhood Conservation District* report, published in 1992 by Milner and Associates together with the Preservation Coalition (now the Preservation Alliance). Having surveyed twelve neighborhood conservation district programs in other cities, several key observations and recommendations were made about how a neighborhood conservation district program would best work in Philadelphia. The authors of the report believed neither the PHC nor the PCPC would be appropriate regulators for the program. Instead, an alternative administrative model would be created to review permits. At the time the report was published, administrative difficulties and the lack of funding in the PHC would make regulating the neighborhood conservation district program impractical. The PCPC was, at the time, not involved in the decision making process for permit applications or denials, especially in the case of building alterations. Today, there is still a lack of funding and administrative support in the PHC to make regulating the NCD program economically feasible. However, because the legislation clearly outlines preservation goals, they would be more suitable to take the role of regulators.<sup>183</sup> While the PCPC today does play a larger role in permit applications, it still does not have the expertise to monitor a program with explicit preservation goals. The PCPC would be a more suitable overseer if the NCD program also had a neighborhood planning component.

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<sup>183</sup> John Milner Associates and The Preservation Coalition of Greater Philadelphia. "The Philadelphia Conservatin District, Volume 1." Philadelphia, 1992, 1 – 6.

Another issue with the NCD ordinance is that there are no mechanisms for the PCPC to deny a demolition permit, other than on the basis of an incomplete application. The bulk of each individualized NCD ordinance is the design guidelines, which affect only “alterations to architectural features of existing buildings that are visible from a public street,” “the new construction and expansion of a building,” and “construction of a new building or use of a vacant property after substantial demolition of an existing building on a property.”<sup>184</sup> Essentially, there is nothing in the NCD ordinance that allows the PCPC to determine whether issuing the demolition permit is appropriate. The demolition permit application must include plans for post-demolition use, which could be new construction or a parking lot, so long as it is permissible by the base zoning district.

An unexpected problem has surfaced in the Queen Village NCD ordinance. There is a conflict between the adopted design guidelines and the American Disabilities Act (ADA), compliance for new commercial properties in the NCD. The ordinance explicitly requires front doors to be raised two steps above the sidewalk so as to avoid conversion of front facades into garages. While reasonable for a private residence, this standard makes it impossible for new businesses to move into the area.

Most of the cities surveyed for the 1992 “Philadelphia Neighborhood Conservation District” report, focused on regulating demolition and new construction; less attention was paid to alterations. Those that did monitor alterations were only done so when a historic preservation commission was the administrator.<sup>185</sup> This trend

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<sup>184</sup> Philadelphia Zoning Code, Section 14-1204(1)(a-c).

<sup>185</sup> John Milner Associates and The Preservation Coalition of Greater Philadelphia. “The Philadelphia Conservatin District, Volume 1.” Philadelphia, 1992, 1 – 6.

is reinforced in Julia Miller's explanation of model conservation district programs. She explains that the historic preservation models hold alterations to a lower standard than new construction and demolition and the neighborhood planning models typically only address issues commonly tackled by zoning and planning laws.<sup>186</sup> The Philadelphia NCD program does regulate alterations as well as new construction and demolition, but gives the PCPC the responsibility to issue certificates of compliance. When preservation is the driving goal, regulating alterations is appropriate; however they should be monitored by a commission with the necessary expertise in architectural history and historic preservation.

## CONCLUSION

No single tool is appropriate for all neighborhoods, especially when Philadelphia has such a wide variety of neighborhood typologies. There is a plethora of

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<sup>186</sup> Julia Miller, *Protecting Older Neighborhoods Through Conservation District Programs*, (Washington, D.C.: National Trust for Historic Preservation, 2004), 2, 3.



neighborhoods comprised of workers' housing, where blocks and blocks of contiguous rowhomes were built to house the workers from nearby industries. While some might see them as monotonous, the subtle architectural detailing and variations in scale or setbacks help to define completely different neighborhoods identities. In other neighborhoods, tree-lined streets hold elegant single-family or twin residences that were constructed as streetcar suburbs or country homes.

As different as is their architecture, the development pressures that affect neighborhoods differ in a variety of ways. Neighborhoods close to Center City are experiencing development pressures as revitalization slowly ripples through the immediate surroundings. In several parts of Philadelphia, neighborhoods that once revolved around industry are still struggling with the effects of mid-20<sup>th</sup> century urban flight; vacant properties and industrial buildings are scars from a once-prosperous time. Other neighborhoods are dealing with the bittersweet conflicts between community revitalization and displacement caused by fast-paced gentrification. Many are simply struggling to maintain the historic structures that define their neighborhood.

Because preservation means different things in different places, it is important for Philadelphia to offer a variety of solutions to help protect the places that mean the most to its residents. The revised zoning code, as analyzed in CHAPTER 2, successfully addresses these concerns and explains their benefits to neighborhoods throughout Philadelphia. A summary of the beneficial recommendations by the consultants is as follows. It is important to note that in order to be successful, the new code needs to

be improved holistically. Many of the recommendations summarized below cannot be implemented without the others.

The format of the zoning code will be simplified. To increase consistency and avoid duplication, regulations will be consolidated into concise chapters, not scattered throughout the code. To increase the code's accessibility and readability, the new code will also incorporate graphics and diagrams to illustrate confusing procedures and complex dimensional regulations. Tables will easily convey information like permitted and regulated uses, signage standards, and public notice and hearing requirements. All changes proposed by the consultants will help to make the zoning code a consistent and reliable regulatory tool.

Simplified and explicit procedures, combined with consolidated and consistent regulations, will help fix the current dysfunctional procedural and enforcement processes. In the new code, the roles and responsibilities of each City agency that might play a role in reviewing zoning applications will be clearly defined. By increasing the authority of staff at L&I and the PCPC to make minor amendments to adopted plans and to authorize minor variances for non-conforming properties, the number of minor cases sent to the ZBA and City Council will be reduced. Additionally, large as-of-right projects will be automatically bumped up to the ZBA for public review, which will increase the opportunities for public input on projects that would have a profound effect in their neighborhoods. While these recommendations will help significantly, a clear and consistent zoning code is imperative in order to limit subjective interpretations that can

lead to dysfunctional processes.

Improving public participation and public notice was a strong priority in the new zoning code. To do this, the new code will expand and clarify requirements for public notices and hearings and consolidate them into an easy-to-read table in the new zoning code. To increase the role of community input during review stages, the new code suggests requiring developers to hold pre-application meetings with neighborhoods. These provisions will greatly improve the accessibility of the zoning code, making it easier for the public to participate

When it comes to city and neighborhood planning and zoning, few changes will actually be made in the new code. Planning in general, however, will be emphasized as an important tool for implementing the zoning code and strengthening community input. The new Philadelphia2035 comprehensive plan will guide the implementation of zoning throughout the city. Although neighborhood plans created outside the PCPC will not be adopted as official policy, new community-based planning guidelines will encourage neighborhoods to create effective plans that will be accepted by the PCPC and influence city decisions. The Citizen's Planning Institute will help to educate and involve citizens in the zoning and planning processes at the citywide scale.

The introduction of contextual standards will help to regulate the transition zones between residential and commercial areas. While still only a proposal, it would be beneficial for the City to adopt the proposal submitted by Alan Greenberger, Executive Director of the PCPC, for the creation of a design review committee to standardize design

review for larger and complex development proposals. Contextual regulations and design review can help protect neighborhoods from incompatible new development.

Changing the approach for dealing with nonconforming properties will be instrumental in facilitating neighborhood revitalization and encouraging adaptive reuse. The current stance on nonconformities is to eliminate the nonconformity as soon as possible. The language will change so that the new zoning code will better accommodate the nonconforming properties that are so common in old cities. The new code will loosen the strict dimensional restriction on nonconforming buildings to allow homeowners to more easily update and maintain their nonconforming building. Additionally, it will relax the regulations on nonconforming buildings and lots to allow and encourage redevelopment and adaptive reuse.

Finally, the new zoning code will consolidate or combine districts with similar standards and address minor dimensional differences through contextual regulations. Additionally, it will utilize the new mixed-use oriented districts such as RC, RMU, CMU, and IMU to address the mixed-use nature of some neighborhoods and to encourage new development. These are positive changes that will help to simplify the format of the zoning code and encourage sustainable and livable neighborhoods.

Those neighborhoods seeking additional protection, beyond the strengthened code, have the option of designating their area a Neighborhood Conservation District. This program, however, would benefit from restructuring if it is to become a strong, successful alternative for neighborhood protection. Although there are a number of

flaws, the NCD program should not be removed permanently. Whether it is amended or replaced, an alternative tool for protecting Philadelphia's older residential neighborhoods can be extremely helpful for preserving the variety of Philadelphia's historic neighborhoods.

To improve Philadelphia's NCD program, there should be a major shift in one of two ways. A new or adjusted program should either remain preservation-focused and be administrated by the PHC or include a stronger community planning component while staying under the auspices of the PCPC. To determine the appropriate course of action, it would be helpful to survey different neighborhood associations, community planners, preservationists and other professionals in the field to understand whether preservation or planning should be a primary focus.

If the intent and purpose for the NCD program is to remain entirely preservation-focused, it would be appropriate to shift the program to the PHC. The PHC has the expertise to administer a preservation-focused program, especially one that is a less-stringent version of the historic district. Unfortunately, the PHC currently lacks financial and administrative support to absorb another program.

If the NCD program were to remain preservation-focused, the ordinance should permit the PHC to approve plans for post-demolition use contingent on how it fits into the context and character of the neighborhood. It is unfortunate that a program whose primary purpose is to conserve the defining characteristics of a neighborhood should not provide a way to better do so.

If the NCD program is to stay with the PCPC, it would be beneficial to shift the purpose of the NCD from preservation to planning. This would largely entail adding a neighborhood planning component to the NCD program. Conveniently, Philadelphia already has Community Planning Guidelines in place. Called “community-based plans,” the major objectives of this program are to link community planning efforts with City policies, plans, and resources, and to give residents an opportunity to influence the planning process.

To create a community-based plan, the neighborhood must create an Advisory Committee to oversee the entire process, hold several public meetings and individual meetings with property owners and organizations to understand the effects of the plan. With support from the PCPC community planners, plans are intended to be consistent with citywide initiatives and be developed in conjunction with the City comprehensive planning process. Many neighborhoods create community plans, but only those accepted by the PCPC have the potential to influence City policy and plans. Although the accepted plan’s goals and objectives will be recognized and supported by the PCPC, the issuance of an “Acceptance Letter” does not obligate the PCPC to fully support or implement each recommendation.<sup>187</sup>

Tying the community-based plans to a conservation district program could truly strengthen the objectives of the NCD program while offering neighborhoods an extra tool for protecting their neighborhood character. Following the Raleigh, North Carolina

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<sup>187</sup> *Community Planning Guidelines*. memo, Philadelphia City Planning Commission, February 16, 2010.

example described above, the community-based planning program could continue as it is, and neighborhoods that wish to also utilize the NCD program would be required to go through the same process before incorporating enforceable design guidelines into their adopted plans. Properties located within the NCD neighborhoods would be flagged for review by the PCPC, as they currently are in the NCD program, but a neighborhood plan would accompany the design guidelines to better inform the decision making process. Neighborhoods that complete a planning process will not only have an opportunity to create design guidelines for alterations and construction, but will also be able to think critically about the future of their neighborhood in relation to the city at large.

Another benefit to the neighborhood planning model in Philadelphia is that it would help to alleviate undesirable development pressure and fears about larger scale, incompatible new construction. As mentioned before, the PCPC currently cannot deny a demolition or new construction permit; it can only ensure that new residential or commercial construction adheres to the design guidelines and that applications for demolition explain the post-demolition use. A neighborhood plan that is accepted by the PCPC has the potential to prevent a structure from being demolished for a parking lot, an activity that is technically allowable under the current NCD ordinance.

In sum, the neighborhood planning approach appears to be the more ideal model for Philadelphia. Not only does this approach allow for more community participation, an important priority illustrated during the zoning code reform process, it allows communities to utilize the community-based planning program and interact with

citywide planning efforts. It is the neighborhood as a whole that many residents are most passionate about, and with neighborhood planning many of those concerns can be avoided or planned in a way most appealing to residents.

The expectation for positive change from the new zoning code is high, though doubts remain strong about whether Philadelphia can overcome issues whether they be political or involve heavy variance use to move forward. If the consultants, the ZCC, City Council and the citizens of Philadelphia can work out the kinks to accept a new zoning code that is easy to read and enforce, contains undeniable regulatory strength, and invites the public to participate in its application and enforcement, there is no doubt that neighborhoods throughout the city will be better able to control change.



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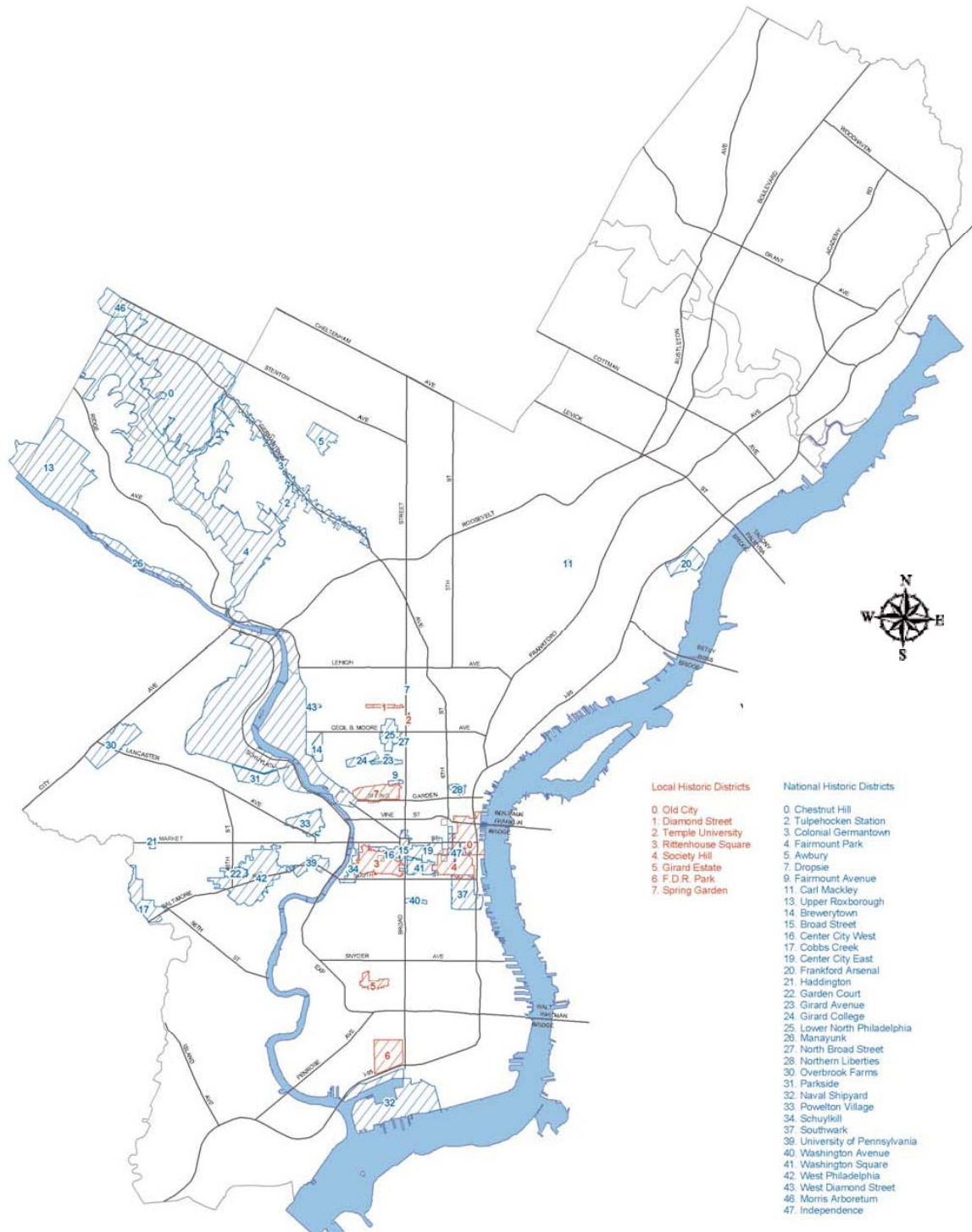
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## APPENDIX A - Map of National Register and Local Historic Districts in Philadelphia



Source: Philadelphia City Planning Commission. "The Political and Community Service Boundaries of Philadelphia," 2006. <http://www.philaplanning.org>.

## APPENDIX B – Zoning Code Reform Schedule

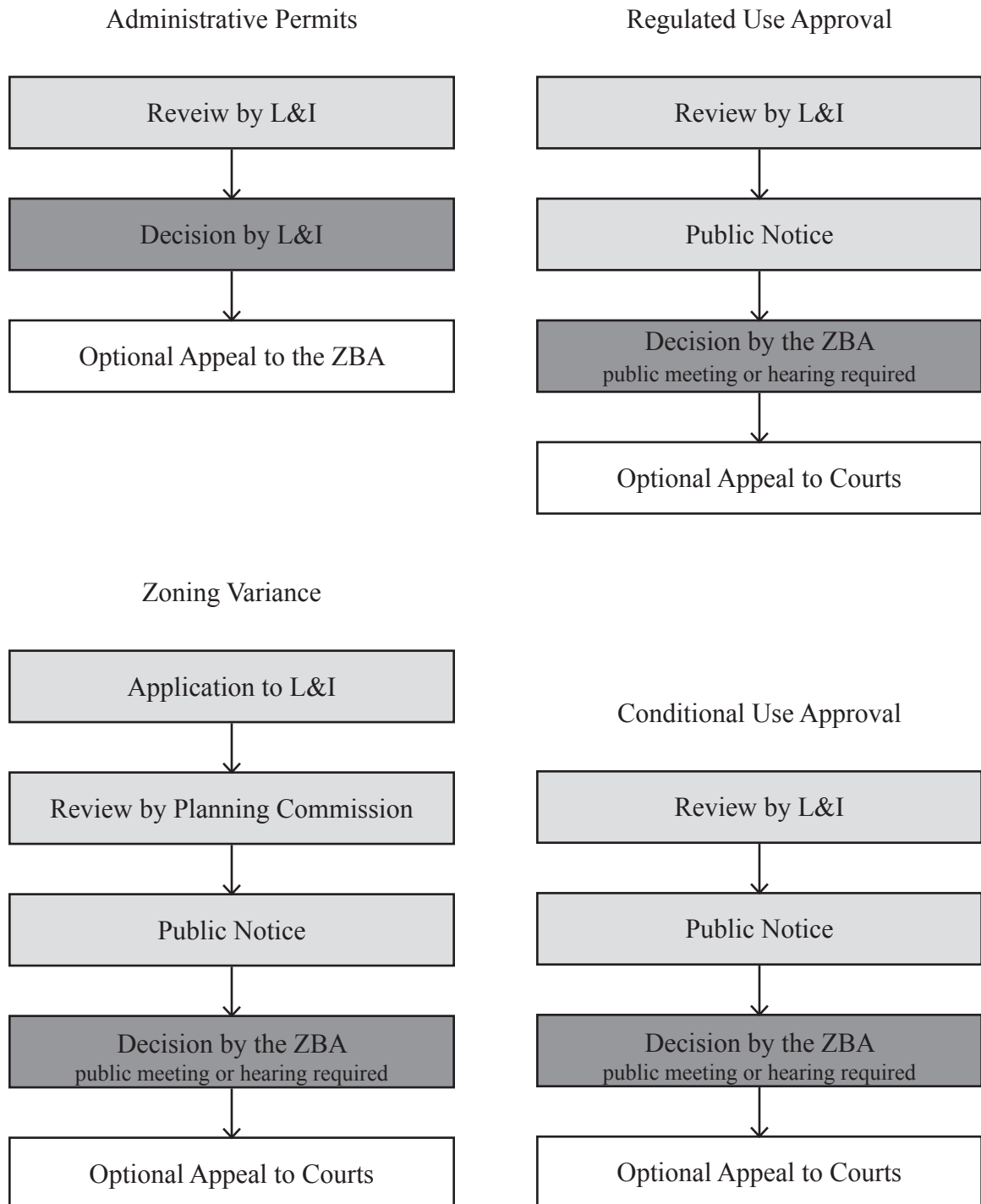
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Appointment of the Commission	Appointments are required 60 days after the election results are certified
Preparation of the Preliminary Report	<p>The Commission must meet at least 10 times and all meetings are open to the public</p> <p>The Commission must hold at least two public hearings</p> <p>A preliminary report is due by June 30, 2010 (City Council may extend this date by a two-thirds vote)</p>
Public Review & Council Action on the Preliminary Report	<p>Within 45 days after the preliminary report is released, City Council must convene public hearings to review the recommendations</p> <p>City Council may make written recommendations to the Commission within 30 days after these hearings</p>
Issuance of a Final Report	The Commission will issue a final report within 30 days after receipt of Council's recommendations
Council Action on the Final Report	City Council must approve, reject or table the Commission's final report within 60 days after it is issued or by the fifth Council meeting after its release, whichever is later

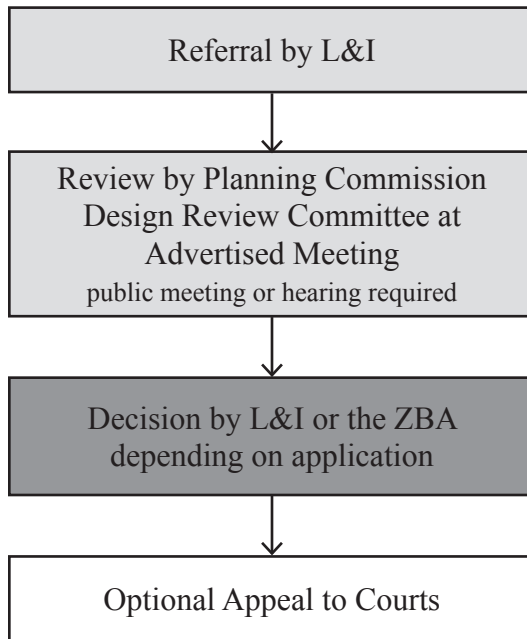
Source: "Timeline" Zoning Matters, 2010, <http://www.zoningmatters.org/commission/timeline>, 30 Mar 2010.

## APPENDIX C – Permit Application and Review Procedures

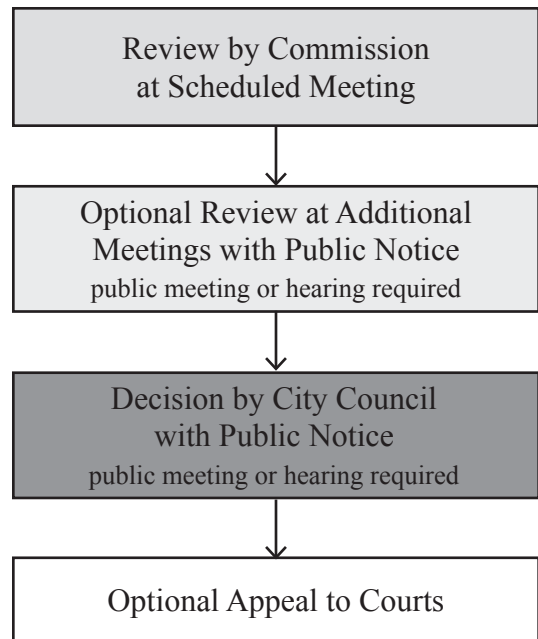
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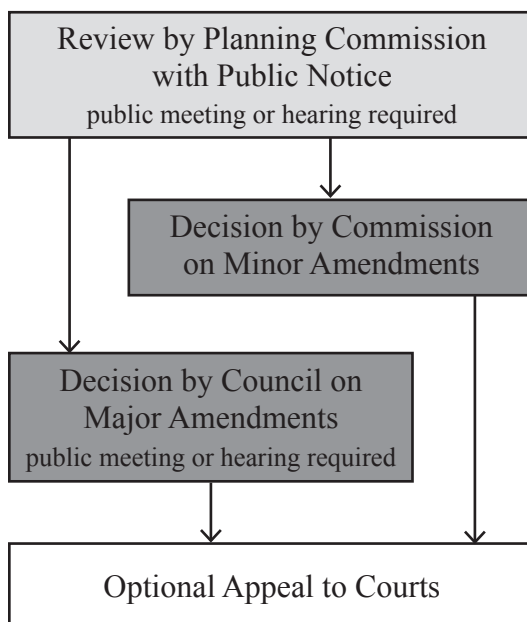
### Design Review



### Zoning Map or Text Amendment



### Amendments to Plans of Development



Source: Clarion Associates and Duncan Associates. *Philadelphia's New Zoning Code: Module 1 - Administration and Procedures*. Philadelphia: Zoning Code Commission, February 2010.



## Philadelphia Zoning Code Update

### EXECUTIVE SUMMARY: ASSESSMENT OF EXISTING CODE

#### 1. Goals of the Zoning Code Reform Effort

The authorizing legislation for the Philadelphia Zoning Code Commission states that:

*“Philadelphia’s Zoning Code should be consistent and easy to understand, should help shape future construction and development, and should enhance and improve Philadelphia’s development approval process while encouraging positive development and protecting the character of Philadelphia’s neighborhoods.”*

During the first year of the Commission’s work, that general direction has been refined to include the following more detailed topics:

- **Simplify Base Districts.** To simplify the structure of the city’s 55 zoning districts by consolidating similar districts and/or eliminating districts that are used very rarely.
- **Simplify Overlay Districts.** To consolidate some of the city’s 30 overlay districts in order to make their content more understandable.
- **Simplify Approvals.** To reduce the number of decisions that go to the Zoning Board of Adjustment to allow more “by-right” development subject to standards that protect neighborhood character.
- **Protect Neighborhoods.** To protect neighborhood character through increased use of citizen input into community plans, development standards and reduced reliance on Zoning Board of Adjustment reviews.
- **Promote Sustainability.** To incorporate standards that promote sustainability of development in the city.
- **Promote Quality and Design.** To incorporate standards that improve development quality and design.
- **Improve Readability and Reorganization.** To use charts, graphics, and illustrations to make the Code easier to read and to reorganize the material to group similar regulations together.

As the first step in implementing these objectives, the Zoning Code Commission consultants prepared an assessment of the existing Philadelphia zoning code. That document included (1) a consultant’s review of the code, (2) interviews with professionals who use the code in the development or redevelopment process, (3) workshops in each Councilmanic District to obtain input from community residents and organizations, and (4) an on-line web survey available to the public. The key findings in each of these four areas are summarized below.

# Philadelphia Zoning Code Update

## 2. Consultant's Review

Some of the key observations from the Assessment of the Existing Code are listed below. For a full listing of observations, please refer to the Assessment Report.

### Organization, Format, and Usability

- ☐ The code's organizational structure needs a complete overhaul.
- ☐ Basic regulations governing matters such as parking, signs, and accessory uses should be consolidated into easy-to-use chapters.
- ☐ Many uses, terms, and regulations are dated if not antiquated.
- ☐ The code needs more tables, graphics, and other ease-of-use features.

### Residential Zoning

- ☐ The number of residential zoning districts can be greatly reduced through elimination and consolidation.
- ☐ Some R zoning categories provide a poor fit with the physical characteristics of existing neighborhoods.
- ☐ Many residential zoning classifications are seldom used.

### Commercial and Mixed Use Zoning

- ☐ Zoning districts should be consolidated, where possible.
- ☐ Create incentives to encourage reuse and redevelopment of commercial properties.
- ☐ Include pedestrian shopping street standards into the city's "standard" commercial zoning regulations.

### Industrial Districts

- ☐ The city needs to consolidate industrial zoning classifications.
- ☐ Permitted use lists should be modernized to allow for a broader range of light industry and "business park" developments.
- ☐ Some land should be rezoned into more flexible non-industrial classifications.

### Special Districts

- ☐ Special districts make the ordinance confusing and difficult to administer.
- ☐ Existence of special controls is not adequately communicated through the existing code's structure.
- ☐ There is redundancy among some special districts; many regulate the same or very similar matters.
- ☐ The boundaries and descriptions of special districts are not always clear.

### Sustainable Development

- ☐ The new code should include provisions addressing accessory energy generation (wind and solar) devices, as well as energy conservation and reducing carbon dioxide emissions.
- ☐ The code should accommodate community food production and access to local produce.
- ☐ Landscaping and tree protection standards should promote expansion of tree cover, which would contribute to increased absorption of carbon dioxide and reduction of the "urban heat island" effect.

### Sign Regulations

- ☐ The sign chapter should contain all the basic rules and regulations, most of it in table format.
- ☐ Sign regulations should be predictable and consistent and allow businesses adequate opportunities for business identification and the advertising of goods and services without specialized review.
- ☐ Special district sign regulations need to be more standardized and predictable.

# Philadelphia Zoning Code Update

## Urban Design

- The city should consider creating a Center City zoning classification that consolidates the special rules and special districts that apply throughout Center City.
- The urban design standards of many of the special districts need to be refined and coordinated so that they are working toward implementation of the same objectives.
- The city needs to consider a targeted approach to design review, building on the proposal recently put forth by the Philadelphia City Planning Commission.

## Parking and Transportation

- Off-street parking regulations are out-of-date, inflexible, and in some cases require too much parking.
- All of the parking regulations should be contained within a single parking chapter in the new code.
- The code should do more to accommodate shared parking arrangements and to recognize the role of transit and other modes of travel on parking demand.

## Rehab, Reuse, and Reinvestment

- The current code is too inflexible on expansions and alterations of nonconforming situations.
- The current code lacks contextual development standards that would accommodate redevelopment that is in keeping with existing neighborhood conditions.

## Administration and Procedures

- The Zoning Board of Adjustment handles an extraordinarily high number and variety of cases.
- Procedures need to be made more transparent and user friendly.
- The City's heavy reliance on "use variances" should be reduced.
- Staff should be given greater authority to approve minor changes to plans and/or to authorize minor modifications of standards in well-defined circumstances.

## 3. Professional Code User Interviews

The consulting team conducted twenty-one meetings, and City staff conducted an additional five meetings with groups of Philadelphia citizens who use the code in the course of their business, including architects, designers, lawyers, developers, and others. Some of the key recommendations from these meetings are listed below. For a full listing of recommendations, please refer to the [Assessment Report](#).

### Relationship of Zoning to Planning

- In neighborhoods where there is a neighborhood plan, development review often ignores the plan.
- The ZBA will not take into consideration neighborhood plans that are not adopted by PCPC.

### Zoning Classifications

- There are too many zoning classifications, particularly residential and industrial districts.
- While some of the existing classifications might be able to be consolidated, there is potentially need for new mixed-use and Transit Oriented Development (TOD) districts in some parts of the City.

# Philadelphia Zoning Code Update

## Organization

- ☐ Flipping back to previous chapters was not effective and tended to be frustrating for code-users.
- ☐ A zoning table similar to that used for the residential districts for uses and dimensions would be helpful.

## Overlays

- ☐ There was significant frustration with the number of overlays, the political origins of many of them, and how difficult it is to determine which overlays apply to a given property.
- ☐ Standards in the overlays should be incorporated into the underlying districts.

## Uses

- ☐ Many uses currently listed in the code are out of date and need to be modernized.
- ☐ Zoning should not just be about form; good use regulations remain important.
- ☐ Parking and signage regulations need to be addressed and updated.
- ☐ The standards for “home-based business” need to be revisited.

## Sustainability

- ☐ The City’s approach to sustainability needs to be defined and reflect a balance that takes into account the desire for development and redevelopment in the city.
- ☐ Some basic elements of sustainability should be mandated, but more progressive elements should either be incentivized or not addressed at all in the zoning code.

## Open Space

- ☐ The definition of open space needs to be improved and the thirty percent open space requirement on older nonconforming residential lots needs to be revisited because it is often not achievable.
- ☐ Paved areas and parking should not count towards required open space.

## Urban Design/Aesthetics

- ☐ There should be some sort of design review, but there was no consensus on whether the standards should be part of the zoning code or developed as separate guidelines.
- ☐ If the City is going to address urban design, then the City needs to define what it means by urban design and establish clear guidelines. Several participants from the development community suggested that there needs to be flexibility.

## Decision-making

- ☐ There is no consistency in how things are handled and this should be improved.
- ☐ There need to be clear steps to guide people through the City review process and the variance process.
- ☐ Fewer cases need to be sent to the Zoning Board of Adjustment (ZBA).
- ☐ Criteria should be clear so that anyone can come in and represent themselves relative to the criteria.
- ☐ Participants were typically not supportive of decision-making being shifted to City Council.
- ☐ Decision-making on some issues could be shifted to an administrative level or to the PCPC.

## Protective Qualities of the Code

- ☐ The code itself does not protect neighborhoods against incompatible development if it is permitted as-of-right; the complex (uncodified) process protects neighborhoods.

# Philadelphia Zoning Code Update

## 4. Councilmanic District Workshops

A community meeting on the proposed zoning update was held in each of Philadelphia's ten City Councilmanic Districts. Each meeting was organized to present information and options in the same categories used in the on-line survey in order to allow comparison of results from those two sources. Some of the key recommendations from these meetings are listed below; for a full listing of recommendations, please refer to the full Assessment Report.

Participants ranked their priorities among the general zoning topics as shown below:

Tier	Rank	Topic
Top Tier Priorities	1	Providing a clear, fair and efficient zoning approval process
	2	Involving the public in development decisions
	3	Protecting existing neighborhoods from development impacts
	4	Encouraging redevelopment of existing buildings and sites
Middle Tier Priorities	5	Types of commercial, industrial or mixed-use development allowed in different parts of the city
	6	Types of housing allowed in different parts of the city
	7	Promoting sustainable development
	8	The size and design of new buildings
Bottom Tier Priorities	9	The size, design, or location of landscaped areas
	10	The size, design, or location of parking areas

Comments in each of these categories included the following:

### Providing a Clear, Fair, and Efficient Zoning Approval Process

- ☐ Zoning regulations are inconsistently applied to proposed cases, and produce arbitrary results.
- ☐ The time required to process an application is too lengthy.
- ☐ The code is difficult to interpret because it employs highly technical language and does not include enough visual aides to depict zoning issues.

### Involving the Public in Development Decisions

- ☐ The public receives insufficient information about zoning cases that may affect them.
- ☐ The public is unable to locate enough information about zoning cases online.
- ☐ An attorney is often required to represent opinions before the ZBA, which is cost-prohibitive for many.
- ☐ Public opinion does little to influence zoning decisions.

# Philadelphia Zoning Code Update

## Protecting Existing Neighborhoods from Development Impacts

- ☐ Zoning regulations do not provide guidelines for how developments can be contextually integrated into a community.
- ☐ The effects of development (e.g. parking, traffic, and property value impacts) are not considered in zoning decisions.
- ☐ Current regulations are insufficiently enforced.

## Other Topics

- ☐ Redevelopment and reuse is not encouraged.
- ☐ The code should provide for well-defined commercial corridors within neighborhoods that provide uses that serve neighborhood needs.
- ☐ The subdivision of existing homes to accommodate more dwelling units occurs too often.
- ☐ The code does not sufficiently support important infrastructure systems, such as open space, water, sewer and stormwater.
- ☐ The code does not effectively regulate building design.
- ☐ The code does not provide for well-designed landscaping.

## 5. On-Line Web Survey Results

As of March 2009, a total of 1,178 on-line surveys had been completed, and the results of those surveys are summarized below.

### General Zoning Topics: Top Three Priorities

- ☐ Encouraging redevelopment of existing buildings and sites
- ☐ Protecting existing neighborhoods from development impacts
- ☐ The size and design of new buildings

### General Zoning Topics: Satisfaction

- ☐ Respondents were generally satisfied with zoning topics as they pertained to their neighborhood.
- ☐ Some were dissatisfied with “the size, design, or location of parking areas” in their neighborhood.
- ☐ Respondents were less satisfied with general zoning topics as they pertained to the City as a whole.

### Technical Zoning Topics: Top Three Priorities

- ☐ Supporting an overall planning vision for Philadelphia.
- ☐ Ensuring that decisions about development are fair and objective.
- ☐ Providing a clear and efficient zoning approval process.

### Technical Zoning Topics: Satisfaction

- ☐ Respondents were less satisfied with technical topics than they were with general topics.
- ☐ Most notably, respondents generally strongly disagreed with the statements “The zoning code is user friendly” and “The zoning approval process is clear and efficient.”
- ☐ Response data did not vary widely by level of familiarity with the code.

## APPENDIX E – Sample Illustrated Diagram from Smart Code

### TABLE 4B. PUBLIC FRONTAGES - SPECIFIC

**SMARTCODE**

Municipality

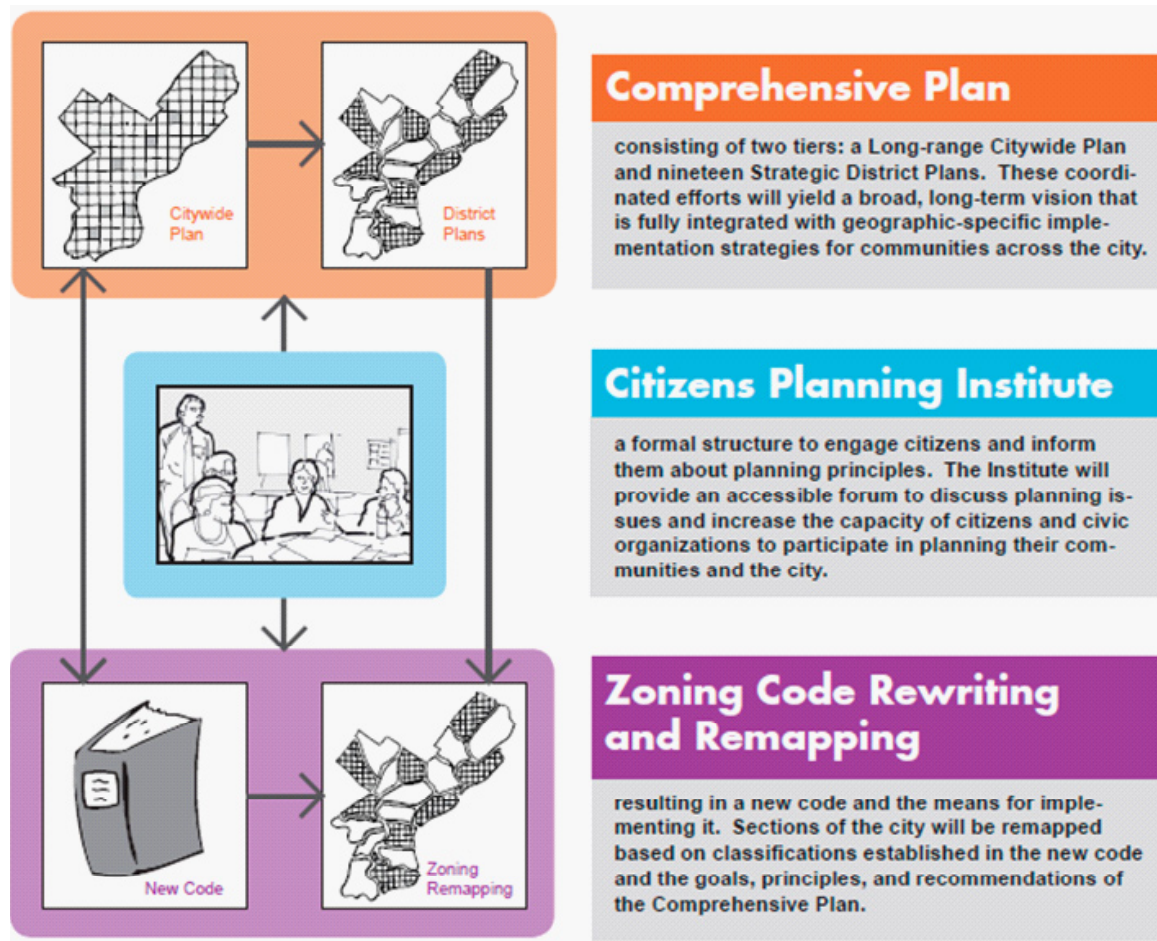
**Table 4B: Public Frontages - Specific.** This table assembles prescriptions and dimensions for the Public Frontage elements - Curbs, walkways and Planters – relative to specific Thoroughfare types within Transect Zones. Table 4B-a assembles all of the elements for the various street types. Locally appropriate planting species should be filled in to the calibrated Code.

		RURAL						TRANSITION						URBAN	
TRANSECT ZONE		T1	T2	T3	T1	T2	T3	T3	T4	T4	T5	T5	T6	T5	T6
Public Frontage Type		HW & RD			RD & ST			ST-DR-AV		ST-DR-AV-BV		CS-DR-AV-BV		CS-DR-AV-BV	
a. Assembly:	The principal variables are the type and dimension of Curbs, walkways, Planters and landscape.														
	Total Width	16-24 feet			12-24 feet			12-18 feet		12-18 feet		18-24 feet		18-30 feet	
b. Curb:	The detailing of the edge of the vehicular pavement, incorporating drainage.														
	Type Radius	Open Swale 10-30 feet			Open Swale 10-30 feet			Raised Curb 5-20 feet		Raised Curb 5-20 feet		Raised Curb 5-20 feet		Raised Curb 5-20 feet	
c. Walkway:	The pavement dedicated exclusively to pedestrian activity.														
	Type Width	Path Optional n/a			Path 4-8 feet			Sidewalk 4-8 feet		Sidewalk 4-8 feet		Sidewalk 12-20 feet		Sidewalk 12-30 feet	
d. Planter:	The layer which accommodates street trees and other landscape.														
	Arrangement	Clustered Multiple			Clustered Multiple			Regular Alternating		Regular Single		Regular Single		Opportunistic Single	
	Species	Multiple			Multiple			Alternating		Single		Single		Single	
	Planter Type	Continuous Swale			Continuous Swale			Continuous Planter		Continuous Planter		Continuous Planter		Tree Well	
	Planter Width	8 feet-16 feet			8 feet-16 feet			8 feet-12 feet		8 feet-12 feet		4 feet-6 feet		4 feet-6 feet	
e. Landscape:	The recommended plant species. (See Table 6)														
f. Lighting:	The recommended Public Lighting. (See Table 5)														

Source: "Smart Code Version 9.2." SmartCode Central. [http://www.smartcodecentral.org/smartfiles/v9\\_2.html](http://www.smartcodecentral.org/smartfiles/v9_2.html).



## APPENDIX F – Diagram and Schedule of Integrated Planning and Zoning Process



		2009	2010	2011	2012	2013	2014	2015	2016
Comprehensive Plan	<i>Imagine Philadelphia: Laying the Foundation</i>								
	Long-range Citywide Plan								
	Strategic District Plans (4 plans/year)								
Citizens Planning Institute	Curriculum Development								
	Sessions (3/year)								
Zoning Reform	Recommendations (Phase 1)								
	Rewriting (Phase 2)								
	Remapping								

Source: Philadelphia City Planning Commission, Public Hearing Presentation, October 2009.



## APPENDIX G – Sampling of Conservation District Programs

### Jurisdictions with Conservation District Programs

Set forth below is a list of jurisdictions that currently operate conservation district programs.

**Annapolis, MD:** The city's residential conservation district program is administered by the city's Department of Planning & Zoning. Enabling legislation for the program is located under Title 21 of the Code and Charter of the City Annapolis. See <http://municipal.codes.lexisnexis.com/codes/annapolis/>. Legislation governing its residential overlay districts is promulgated under chapters 21.69 and 21.69A. The Eastport Conservation District Overlay is promulgated as Chapter 21.69B. (The Annapolis zoning code is currently undergoing revision and therefore these citations are likely to change.)

**Atlanta, GA:** The city's conservation district program is operated by the Urban Design Commission as part of its preservation program. See <http://www.atlantaga.gov/government/urbandesign.aspx>. Information governing the Brookwood Hills Conservation District is located at <http://www.brookwoodhills.com/ARP.htm>. The city's preservation ordinance is available at [www.municode.com](http://www.municode.com). See the Atlanta Code of Ordinances, part 16: Zoning; chapter 20: HC Historic and Cultural Conservation Districts; and subpart. 6: Budget and Planning, article D: Historic Preservation Program.

**Austin, TX:** Older neighborhoods in Austin may seek protection from incompatible development through the adoption of a Neighborhood Conservation Combining District overlay. See <http://www.ci.austin.tx.us/zoning/npcd.htm>. The Hyde Park neighborhood, for example, uses the NCCD designation to protect its historic character through development and historic preservation measures. See [http://www.ci.austin.tx.us/zoning/hyde\\_park1.htm](http://www.ci.austin.tx.us/zoning/hyde_park1.htm).

**Boise, ID:** Boise's Neighborhood Conservation District program is administered by the Department of Planning and Development Services. The city's "Neighborhood Conservation District" law and an ordinance establishing the "Near North End Conservation District" may be viewed at [http://www.cityofboise.org/city\\_clerk/citycode/1119.pdf](http://www.cityofboise.org/city_clerk/citycode/1119.pdf) and [http://www.cityofboise.org/city\\_clerk/citycode/1120.pdf](http://www.cityofboise.org/city_clerk/citycode/1120.pdf), respectively. For further information on Boise's program, visit the Boise website at <http://www.cityofboise.org>.

**Boston, MA:** The Boston Landmarks Commission designates architectural conservation districts, in addition to individual landmarks, landmark districts, and protection areas (which must be contiguous to a landmark or district). Architectural conservation districts have a lower threshold for designation than historic districts and may be governed by more flexible standards. The city's preservation ordinance is posted at [http://www.cityofboston.gov/environment/pdfs/BLC\\_Preserv\\_Act.pdf](http://www.cityofboston.gov/environment/pdfs/BLC_Preserv_Act.pdf). Guidelines for individually-des-

ignated districts may be viewed at <http://www.cityofboston.gov/environment/downloads.asp#historic>. For detailed information on the Aberdeen Architectural Conservation District, see <http://brighton02135.tripod.com/arcafid8.html>.

**Boulder County, CO:** Boulder created a conservation district program, administered by the county's land-use department, in 2002. The Neighborhood Conservation District Overlay zoning amendment is reproduced at <http://www.co.boulder.co.us/lu/lucode/amendments/dc0201approved.pdf>. Although efforts have been made to establish a district, no districts have been approved to date. Proponents have not been able to secure the necessary approval of 60 percent of the affected owners.

**Cambridge, MA:** Cambridge has one of the longest operating neighborhood conservation district programs in the country. Administered by the Cambridge Historical Commission, the program seeks to preserve the historic and architectural character of its distinctive neighborhoods. Legislation governing the city's neighborhood conservation districts is located at <http://www.ci.cambridge.ma.us/~Historic/ordinances.html>. Specific information about the program is located at the Cambridge Historical Commission's website at <http://www.ci.cambridge.ma.us/~Historic/districts.html>.

**Chapel Hill, NC:** Chapel Hill used its newly enacted conservation district law to prevent the construction of duplexes in Northside, described as an established working-class neighborhood near the University of North Carolina campus. The city's conservation district law, codified as § 3.6.5 of the Land Use Management Ordinance, may be viewed at [www.municode.com](http://www.municode.com). Go to Article 3 of the city's Land Use Management Ordinance. For specific information on Chapel Hill's conservation district program, which is administered by the city's planning department, see <http://townhall.townofchapelhill.org/planning/ncd/NCD.html#1>.

**Dallas, TX:** At least 12 conservation districts have been established in Dallas, with the more recent districts being used to address concerns about teardowns in the city's older neighborhoods. These districts generally include restrictions on size and design to ensure that new construction is compatible with existing homes. The city's conservation district ordinance is codified at § 51A.4.505 of the Dallas Development Code, Part 11. The code may be viewed online at <http://www.amlegal.com>. For information on the city's conservation district program, contact the Long Range Planning Division of the Department of Development Services. See [http://www.dallascityhall.com/dallas/eng/html/development\\_services\\_office.html#LRPlanning](http://www.dallascityhall.com/dallas/eng/html/development_services_office.html#LRPlanning). Individual ordinances are posted at [http://www.dallascityhall.com/dallas/eng/html/conservation\\_ordinances.html](http://www.dallascityhall.com/dallas/eng/html/conservation_ordinances.html).

**Davis, CA:** Davis protects its downtown neighborhoods by discouraging demolition while encouraging compatible development in areas designated as a "Traditional Neighborhood Overlay District." The ordinance provision establishing the program is set forth at § 40.13A of the city's zoning code, which may be viewed at <http://www.cityofdavis.org/cmo/citycode>. Design guidelines for designated areas may be viewed at <http://www.city.davis.ca.us/pb/design/>.

**Huntington Beach, CA:** Designation as a neighborhood conservation district in Huntington Beach requires the support of at least 51 percent of the owners. The city's enabling law for its neighborhood conservation district program is available at [http://www.ci.huntington-beach.ca.us/files/users/city\\_clerk/chp224.htm](http://www.ci.huntington-beach.ca.us/files/users/city_clerk/chp224.htm).

**Indianapolis, IN:** Three conservation districts have been designated under the city's preservation program, including two African American communities and a 19th-century, railroad town that falls within the city's jurisdiction. Individual plans for these districts are highly detailed, providing recommendations for housing, public infrastructure, zoning, and traffic as well as design review. Information on the city's conservation district program, including individual conservation plans, is available at <http://www.indygov.org/histpres/districts.htm>.

**Iowa City, IA:** Iowa City has adopted several conservation districts through its historic preservation program. The city's "Conservation District Overlay Zone" law can be viewed at <http://www.sterlingcodifiers.com/IA/Iowa%20City/index.htm>. See Title 14, Art. J, § 14-6]-4 of the Unified Development Code. Detailed information on the city's conservation districts is available in the "Historic Preservation Handbook," which is posted on the web at <http://www.icgov.org/documents/HPChandbook.pdf>. For an interesting discussion on the differences between historic districts and conservation districts, see the Historic Preservation Commission's minutes for its May 23, 2002 meeting, which is posted at <http://www.icgov.org/board-minute/219>.

**Jackson, TN:** Conservation districts in Jackson are administered by the Jackson-Madison County Historic Zoning Commission. Conservation District Design Guidelines are posted at <http://www.cityofjackson.net/departments/planning/GConsv.PDF>. The guidelines address compatible new construction and demolition.

**Jefferson, LA:** A neighborhood conservation district has been established for a portion of the Old Matarie neighborhood in Jefferson. Major residential development proposals, subdivision, and rezoning requests, and applications for variances are reviewed by an advisory neighborhood commission. Final decisions are made

by the governing regulatory body. A summary of the process is posted at <http://www.jeffparish.net/index.cfm?DocID=1214>. The city's zoning ordinance (chapter 40, article 10) establishing the district may be viewed at [www.municode.com](http://www.municode.com).

**Knoxville, TN:** Conservation districts in Knoxville are established under article 2, section 22 of the city's zoning ordinance, and may include development guidelines that support design objectives. See <http://www.knoxmnc.org/zoning/cityzone/a4s22.htm>. As with other conservation district programs in Tennessee, districts are designated by the city and administered by the Historic Zoning Commission.

**Memphis, TN:** The city designates conservation districts as part of its historic preservation program. Information on the Memphis Landmark Commission's conservation districts is located at [http://www.co.shelby.tn.us/county\\_gov/divisions/plann\\_dev/planning/landmark/index.htm](http://www.co.shelby.tn.us/county_gov/divisions/plann_dev/planning/landmark/index.htm).

**Miami, FL:** In Miami, Neighborhood Conservation Districts are established through the adoption of a master plan or design controls in accordance with Article 8 of the city's zoning ordinance. NCDs are administered by the Department of Planning & Zoning. Special reviews may be required by other departments, including the Historic and Environmental Preservation Board. See [www.municode.com](http://www.municode.com).

**Napa, CA:** In Napa, the city's neighborhood conservation program is operated under its historic preservation program in accordance with its Historic Preservation and Conservation Ordinance. See <http://www.cityofnapa.org/MunicipalCode/Title15.htm>. As with many conservation districts, the standards governing the review of applications for certificates of appropriateness focus on mass and scale, construction materials, building orientation and alignment, and the preservation of "major character-defining features."

**Nashville, TN:** Nashville's six conservation districts are administered by the Metropolitan Historic Zoning Commission (serving both Nashville and Davidson County) under its historic preservation program. Specific information on the conservation district program is located at the Commission's website at <http://www.nashville.gov/mhc/cv.htm>. Neighborhood Conservation District Overlays are established under § 17.36.110 of the Code of Laws of the Metropolitan Government of Nashville and Davidson County, Tennessee. See [http://municipalcodes.lexisnexis.com/codes/nashville/\\_DATA/TITLE17/Chapter\\_17\\_36\\_OVERLAY\\_DISTRICTS/17\\_36\\_110\\_Historic\\_overlay\\_dis.html](http://municipalcodes.lexisnexis.com/codes/nashville/_DATA/TITLE17/Chapter_17_36_OVERLAY_DISTRICTS/17_36_110_Historic_overlay_dis.html).



**Oklahoma City, OK:** Oklahoma City operates an Urban Conservation District program. The city's conservation district ordinance is promulgated as § 59-4300 of the city's municipal code, which is located under article 4, chapter 59. The city's code may be viewed at [www.municode.com](http://www.municode.com).

**Oregon City, OR:** Conservation districts in Oregon City are established through the city's preservation program. Authority to establish a conservation district overlay is established under Chapter 17.40 of the city's municipal code. See <http://ordlink.com/codes/oregonci/index.htm>.

**Philadelphia, PA:** Adopted in 2004, Philadelphia's neighborhood conservation district program requires that applications for NCD status be initiated by a neighborhood association or by petition containing signatures of at least 20 percent of the owners in the proposed district. If 51 percent or more of the owners file a written objection to the designation, then the proposed district may not be established. Design guidelines are developed with the assistance of the city's planning department and Certificates of Compliance are required for demolitions, alterations, and construction. See <http://www.preservationalliance.com/bill.pdf>.

**Phoenix, AZ:** Phoenix operates a neighborhood conservation district program through its planning office. Legislation providing authority to establish "Special Planning Districts" is located under § 402 of the Phoenix Zoning Ordinance. See [www.municode.com](http://www.municode.com). Information on the city's program is available at <http://www.ci.phoenix.az.us/ZONING/ch004.html>. A list of publications on individual districts is located at <http://www.ci.phoenix.az.us/PLAN-NING/plnpubs.html>.

**Portland, OR:** Portland has adopted seven conservation districts under its historic preservation program. Ordinance provisions governing the designation of conservation districts and the review of properties within such districts are located at [http://www.planning.ci.portland.or.us/zoning/ZCTest/400/445\\_Historic.pdf](http://www.planning.ci.portland.or.us/zoning/ZCTest/400/445_Historic.pdf) and [http://www.planning.ci.portland.or.us/zoning/ZCTest/800/846\\_Historic\\_reviews.pdf](http://www.planning.ci.portland.or.us/zoning/ZCTest/800/846_Historic_reviews.pdf). Design guidelines for individual districts may be viewed at [http://www.planning.ci.portland.or.us/bop\\_library.html](http://www.planning.ci.portland.or.us/bop_library.html). Maps of each conservation district may be viewed at [http://www.planning.ci.portland.or.us/mp\\_hist.html](http://www.planning.ci.portland.or.us/mp_hist.html).

**Raleigh, NC:** Development controls for individual conservation districts in Raleigh are set forth in the neighborhood plan. Raleigh's conservation district enabling legislation may be viewed at [www.municode.com](http://www.municode.com). See the Raleigh Code of Ordinances, Div. II, part 10, chapter 2, article C, § 10-2054. Information on the city's "Neighborhood Conservation Overlay District" program is available at <http://www.raleighnc.org/planning/CP/Neighborhoods2.htm>.

**San Antonio, TX:** Neighborhood Conservation Districts are used in San Antonio to address the appropriateness of new and infill construction in residential and commercial areas. The program is operated by the planning department and projects are reviewed as an administrative process. See <http://www.sanantonio.gov/planning/neighborhoods/north%20central/Appendix%20H.PDF>.

**Springfield, MO:** Springfield operates an urban conservation district program through its planning department. The ordinance governing the establishment of conservation districts is located at § 4-2300 of the city's zoning ordinance. See [www.municode.com](http://www.municode.com). Individual plans may be viewed at <http://www.ci.springfield.mo.us/egov/planning/nco/orgs.html#pna>.

**Wilmington, DE:** Authority to establish a neighborhood conservation district program in the city's Forty Acres neighborhood is currently under consideration. Legislation establishing the program and specific design guidelines for conservation districts may be viewed on the city's website at <http://www.ci.wilmington.de.us/departments/planning.htm>.

Source: Miller, Julia. *Protecting Older Neighborhoods Through Conservation District Programs*. Washington D.C.: National Trust for Historic Preservation, 2004.

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